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10 Attorney for John Tam, Jamie Yang,
11 and Corey Fong

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 ACTIVISION PUBLISHING, INC., a
16 Delaware corporation,

17 Plaintiff,

18 vs.

19 JOHN TAM, an individual, JAMIE YANG, an
20 individual, COREY FONG, an individual,
21 DOUG KENNEDY, an individual, HONG YIP
22 LOW, an individual, RAYMOND YOW, an
23 individual, REVERB COMMUNICATIONS,
24 INC., a California corporation, and THE ANT
25 COMMANDOS, INC., a California
26 corporation,

27 Defendants.

) Case No. C 07-03536 MEJ

) NOTICE OF MOTION AND MOTION FOR
) ORDER DETERMINING GOOD FAITH
) SETTLEMENT BETWEEN PLAINTIFF
) AND DEFENDANTS, JOHN TAM,
) COREY FONG AND JAMIE YANG AND
) BARRING OF FUTURE CLAIMS
) AGAINST SETTLING PARTIES;
) MEMORANDUM OF POINTS AND
) AUTHORITIES

) Date: August 30, 2007

) Time: 10:00 AM

) Place: Courtroom B, 15th Floor

28 CONFIDENTIAL

29 CONTAINS MATERIALS DESIGNATED BY ACTIVISION AS CONFIDENTIAL SUBJECT
30 TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED
31 NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC,
32 EXCEPT BY ORDER OF THE COURT.

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1 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

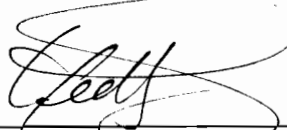
2 PLEASE TAKE NOTICE that on August 30, 2007 at 10:00 AM, or as soon thereafter as
3 the matter may be heard, at the courtroom of Judge Maria Elena James, located at 450 Golden
4 Gate Ave., 15th floor, San Francisco, CA 94102, Defendants John Tam, Jamie Yang, and Corey
5 Fong, (collectively "The Tam Defendants"), through their attorneys of record, will move the court
6 pursuant to sections 877 and 877.6 of the Code of Civil Procedure for an order determining that
7 the settlement entered into between The Tam Defendants and Plaintiff Activision Publishing, Inc.
8 is in good faith and further, for an order barring all joint co-tortfeasors from bringing any further
9 or future claims against each party to this action for indemnity and contribution. This motion will
10 be made and based upon the grounds that the parties have entered into and consummated a
11 settlement in good faith, and that the settlement bars any and all further and future claims by any
12 joint tortfeasors or co-obligors for indemnity or equitable comparative contribution, or partial or
13 comparative indemnity and fault against the settling parties pursuant to Code of Civil Procedure '
14 877.6(c).

15 This motion will be made and based upon this Notice of Motion, the attached
16 Memorandum of Points and Authorities, the Declarations of Richard F. Cauley and Yee-Horn
17 Shuai, and such other and further oral and documentary evidence as may be presented at the
18 hearing of the motion.

19 A courtesy copy of all of this notice and these pleadings will be delivered to the Court's
20 Chambers.

21 Dated: July 16, 2007

SHUAI & ASSOCIATES

22 

23 Yee-Horn Shuai, Attorney for Defendants John Tam,
24 Jamie Yang, and Corey Fong

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF FACTS

The above-entitled action arose out of alleged claims made by Plaintiff Activision Publishing, Inc. (“Activision”) against former employees and defendants John Tam, Corey Fong and Jamie Yang (collectively “The Tam Defendants”), The Ant Commandos, Inc., Hong Lip Yow and Raymond Yow, (collectively “The TAC Defendants”), and Reverb Communications, Inc. And Doug Kennedy, (collectively “The Reverb Defendants”). Activision claimed that The Tam Defendants were working with Activision’s competitor Defendant The Ant Commandos, Inc. (“TAC”) and TAC’s respective directors during their employment and allegedly misappropriated Activision’s trade secret information.

On or about February 6 and 7, 2007, the depositions of John Tam and Corey Fong took place pursuant to the court’s order permitting limited expedited discovery. After the deposition of Mr. Fong, the attorneys and the parties for Activision and The Tam Defendants sat down face-to-face to work out reasonable settlement terms. At the end of those discussions, the parties agreed in principal as to settlement of the matter against defendants John Tam and Corey Fong. Approximately, 3 weeks later the parties agreed to settle the matter as to Jamie Yang as well.

On or about March 27, 2007, Activision and defendants John Tam and Corey Fong executed the Confidential Settlement Agreement in this matter, and entered into a Consent Judgment and Permanent Injunction. On or about April 11, 2007, Activision and Jamie Yang executed the Confidential Settlement Agreement in this matter, and entered into a Consent Judgment and Permanent Injunction.

Whatever the perceived strength of Activision’s claims for liability against the Tam Defendants, Activision never produced any evidence, either formally or informally, that the company had suffered any compensable damages as a result of the actions of any of the defendants, including the Tam Defendants.

From the information received as of the time of the settlements between Plaintiff and the Tam defendants, there was no indication that Activision had suffered any compensable injury.

1 The settlement agreed to between the parties was not entered into with the intent to
2 tortiously injure any of the other parties involved in this lawsuit. Each of The Tam Defendants'
3 settlement consisted of signing a settlement agreement, with a payment of \$17,500 apiece and
4 signing a consent order, with an injunction against not only using Activision's trade secrets, but
5 also agreeing to additional restrictions on their employment unconnected to any use of any
6 Activision intellectual property.

7 Few months thereafter and after much more extensive wrangling and discoveries, The
8 ACT Defendants also settled with the Activision on June 7, 2007. Pursuant to said ACT
9 Defendants' Motion for Order for Determination of Good Faith Settlement, they and their counsel
10 all claim the settlement amount to be fair and in rough approximation of Activision's total
11 recovery and the TAC Defendants' proportionate liability.

12 The Reverb Defendants have repeatedly stated to the Tam Defendants that they do not
13 intend to oppose the Tam Defendants' Motion for Good Faith Settlement Determination.

14 II

15 THIS COURT HAS AUTHORITY TO AND SHOULD MAKE A 16 DETERMINATION THAT THE SETTLEMENT WAS MADE IN 17 GOOD FAITH UNDER C.C.P. SECTION 877.6

18 Code of Civil Procedure § 877.6 allows a settling alleged tortfeasor to request that the
19 court grant a motion for good faith settlement, which has the force and effect of barring other
20 alleged joint tortfeasors from any further claims against the settling tortfeasor for claims of partial
21 or total comparative contribution for indemnity based upon comparative negligence or
22 comparative fault principles.

23 In *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d 488, 499 (1985), the court
24 concluded that a trial court may inquire as to whether the amount of the settlement is within a
25 reasonable "ballpark" range of the settling tortfeasor's proportional share of comparative liability
26 for the alleged damages. This assessment is to be made based on the facts available at the time of
27 settlement. The court outlined factors to be assessed in making the good faith determination as
28 follows:

1 The intent and policies underlying § 877.5 require that a number of
2 factors be taken into account, including a rough approximation of
3 the plaintiff's total recovery and the settlor's proportionate liability,
4 the amount paid in settlement, the allocation of settlement proceeds
5 among plaintiffs, and a recognition that a settlor should pay less in
6 settlement than he would if he were found to have liability at trial.
7 Other relevant considerations include the financial condition and
8 insurance policy limits of the settling defendants as well as the
9 existence of collusion, fraud, or tortious conduct aimed to injure the
10 interest of non-settling defendants. Finally, practical considerations
11 obviously required that the evaluation be made on the basis of
12 information available at the time of settlement.

13 Id. at 499.

14 In the instant case, the facts clearly reflect that the settlement by the parties is in good faith
15 and consistent with the considerations outlined in the *Tech-Bilt* decision.

16 The parties participated in numerous settlement discussions. As a result of those efforts, a
17 settlement with Plaintiff and The Tam Defendants was reached. Due to the confidentiality of the
18 settlement agreement, Tam Defendants can only disclose the settlement amounts under seal. (See
19 Declaration of Yee-Horn Shuai under seal.)

20 Furthermore, there is no evidence that this settlement was the result of collusion, fraud or
21 tortious conduct against the non-settling defendants/cross-defendants. There is no evidence that
22 the agreement was based on anything other than an arms-length negotiation following
23 investigation by all parties concerned.

24 Finally, it is presumed that the settlement was made in good faith and it is the burden of
25 the party opposing the motion to present evidence to the effect that this settlement was not made
26 in good faith. Id. at 499.

27 Further, Code of Civil Procedure §§ 877 and 877.6(c) applies to those defendants who act
28 in concert to cause an injury, and include joint and concurrent and successive tortfeasors. In

III

A DETERMINATION OF GOOD FAITH SETTLEMENT UNDER
C.C.P. § 877.6 BARS ALL CLAIMS FOR CONTRIBUTION OR
INDEMNITY ALLEGED BY JOINT CO-TORTEASORS

Further, Code of Civil Procedure §§ 877 and 877.6(c) applies to those defendants who act in concert to cause an injury, and include joint and concurrent and successive tortfeasors. In *Turcon Construction, Inc. v. Norto-Valliers, Ltd.*, 139 Cal. App. 3d 280, 282 (1983) the court stated:

The clear policy of section 877.6(c) is to encourage settlement by providing finality to litigation for the settling tortfeasor. This policy applies with equal force to all tortfeasors joined in the single action regardless of whether their acts are successive or contemporaneous.

In the present case, The Tam Defendants are individuals and former employees of Activision. They did not have any insurance coverage and limited means. Due to their inability to afford any protracted litigation, The Tam Defendants quickly settled with Activision. Each of The Tam Defendants' settlement consisted of a payment of \$17,500 apiece, and signing a consent order, with an injunction against not only using Activision's trade secrets, but also agreeing to additional restrictions on their employment unconnected to any use of any Activision intellectual property.

After several more months of wrangling and discoveries, The ACT Defendants also settled with Activision for an amount that should be kept confidential. Nevertheless, in the Motion for Order for Determination of Good Faith Settlement, the ACT Defendants do go through and analyze each and every one of the factors for a good faith settlement determination, and claim the

1 settlement amount to be fair and in rough approximation of Activision's total recovery and the
2 TAC Defendants' proportionate liability.

3 As the result, there is no doubt that the settlement agreements between Activision and the
4 Tam Defendants were clearly entered in good faith, and any party asserting lack of good faith shall
5 have the burden of proof on that issue.

6 IV

7 CONCLUSION

8 Plaintiff and The Tam Defendants have agreed to settle this action for complete resolution
9 of any and all outstanding issues. There is no evidence of any collusion or other tortious or
10 injurious conduct on behalf of any settling parties.

11 This settlement clearly conforms with the factors set forth in *Tech-Bilt*. The payments are
12 clearly within their proportionate share of liability based on the facts known at the time of
13 settlement. There is no evidence of collusion or fraud. Rather, this settlement is the result of
14 ongoing discussions between all parties in this action.

15 Based on the foregoing, it is respectfully requested that the court order:

16 a) That the proposed settlement between the parties is in good faith pursuant to Code
17 of Civil Procedure § 877.6; and

18 b) That all future claims against each named party to this action for equitable
19 comparative contribution or partial comparative indemnity, based on comparative negligence or
20 comparative fault (including claims for implied contractual indemnity), be dismissed and are
21 forever barred.

22 Dated: July 16, 2007

SHUAI & ASSOCIATES

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25 Yee-Horn Shuai, Attorney for Defendants John Tam,
26 Jamie Yang, and Corey Fong
27
28

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Attorney for John Tam, Jamie Yang,
and Corey Fong

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACTIVISION PUBLISHING, INC., a
Delaware corporation,

Plaintiff,

vs.

JOHN TAM, an individual, JAMIE YANG, an
individual, COREY FONG, an individual,
DOUG KENNEDY, an individual, HONG YIP
LOW, an individual, RAYMOND YOW, an
individual, REVERB COMMUNICATIONS,
INC., a California corporation, and THE ANT
COMMANDOS, INC., a California
corporation,

Defendants.

)
) Case No. C 07-03536 MEJ
)

) DECLARATION OF RICHARD F. CAULEY
) IN SUPPORT OF MOTION FOR ORDER
) DETERMINING GOOD FAITH
) SETTLEMENT BETWEEN PLAINTIFF
) AND DEFENDANTS, JOHN TAM, COREY
) FONG AND JAMIE YANG AND BARRING
) OF FUTURE CLAIMS AGAINST
) SETTLING PARTIES

) Date: August 30, 2007
) Time: 10:00 AM
) Place: Courtroom B, 15th Floor
)
)

CONFIDENTIAL

CONTAINS MATERIALS DESIGNATED BY ACTIVISION AS CONFIDENTIAL SUBJECT
TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED
NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC,
EXCEPT BY ORDER OF THE COURT.

1 I, Richard F. Cauley, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of
3 California and am a shareholder in the law firm of Wang, Hartmann & Gibbs, PC, former
4 attorneys of record for Defendants John Tam, Corey Fong and Jamie Yang, (collectively "The
5 Tam Defendants"), in the above-entitled actions. I participated in the settlement negotiations
6 between Plaintiff and The Tam Defendants. As such, I have personal knowledge of the facts
7 stated herein and if called upon as a witness, I could and would competently testify to the below
8 facts which are personally known to me.

9 2. The above-entitled action consisted essentially of claims for trade secret
10 misappropriation and breach of contract brought by Plaintiff against its former employees The
11 Tam Defendants.

12 3. To avoid further litigation costs, the Plaintiff and The Tam Defendants agreed to a
13 settlement of this matter; the settlements reached were negotiated and reached in good faith and
14 were not the result of collusion, subterfuge or fraud.. Whatever the perceived strength of
15 Activision's claims for liability against the Tam Defendants, Activision never produced any
16 evidence, either formally or informally, that the company had suffered any compensable damages
17 as a result of the actions of any of the defendants, including the Tam Defendants. This was not
18 surprising, in light of the fact that, by the time the defendants agreed to the injunctive relief
19 sought by Activision which stopped their allegedly infringing activities, the defendants had done
20 nothing to advance the alleged "plot" to compete against Activision other than conduct a couple
21 of meetings and pick a name for their prospective new company. From the information I
22 received as of the time of the settlements between Plaintiff and the Tam defendants, there was no
23 indication that Activision had suffered any compensable injury. The settlement agreed to
24 between the parties was not entered into with the intent to tortiously injure any of the other
25 parties involved in this lawsuit. Each of The Tam Defendants' settlement consisted of signing a
26 settlement agreement, with a payment of \$17,500 apiece and signing a consent order, with an
27 injunction against not only using Activision's trade secrets, but also agreeing to additional
28 restrictions on their employment unconnected to any use of any Activision intellectual property.

1 Copies of these settlement agreements and consent orders are annexed hereto as Exhibits A
2 through F.

3 4. Given the relatively large cash payment by these defendants (\$52,500 all
4 together), the restrictions on their future employment (over and above any agreement not to use
5 Activision intellectual property) and the minimal actual damages incurred by Activision, it is
6 clear that the settlement of the Tam Defendants far exceeds their proportional liability to
7 Activision.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed on July 6, 2007 at Newport Beach , California.

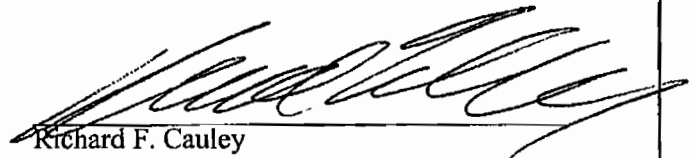
10
11 
12 Richard F. Cauley

EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT

WHEREAS, this Agreement is effective as of February 13, 2007 (“Effective Date”) between Activision Publishing, Inc. (“Activision”), on the one hand, and John Tam and Corey Fong, on the other.

WHEREAS, in Case No. CV 07-00464 CAS (Ex) (the “Action”), plaintiff Activision alleges claims against John Tam, Jamie Yang, Corey Fong, Doug Kennedy, Hong Lip Yow, Raymond Yow, Reverb Communications, Inc., and The Ant Commandos, Inc. (collectively, “Defendants”) for: 1) Copyright Infringement, 2) Lanham Act Violation, 3) Violation Of Computer Fraud And Abuse Act, 4) Violation Of California Penal Code § 502, 5) Misappropriation Of Trade Secrets, 6) Misappropriation Of Confidential Information 7) Breach Of Contract, 8) Breach Of Fiduciary Duty And Duty Of Loyalty, 9) Interference With Contractual Relations, 10) Interference With Prospective Economic Advantage, 11) Statutory Unfair Competition, 12) Common-Law Unfair Competition, And 13) Conversion;

WHEREAS, to avoid the expense and inconvenience of further litigation and legal proceedings and to fully and finally settle all disputes and controversies between them relating to this Action, Activision, Fong and Tam have agreed to settle this Action and all claims arising out of or related to this Action in accordance with the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Activision, Fong and Tam agree as follows:

1. Activision, Fong and Tam have authorized their counsel to execute and file a Consent Judgment and Permanent Injunction in the form attached hereto as Exhibit A. The terms and admissions set forth in the Consent Judgment and Permanent Injunction are expressly incorporated in this Agreement by reference as

if fully set forth herein. As to Tam only, paragraph 10 of the Permanent Injunction shall not be construed to enjoin Tam from future employment with a company that has a then-existing and active relationship with any of the entities set forth in Confidential Appendix B provided that such relationship was not created by Tam and predates Tam's employment with that company. Notwithstanding this, Tam shall still be bound by all other terms of the Permanent Injunction with respect to such employment.

2. Fong and Tam shall each pay Activision the amount of seventeen thousand five hundred dollars (\$17,500). Payment shall be made to Activision Publishing, Inc., Attn. General Counsel, 3100 Ocean Park Blvd., Santa Monica, CA 90405. Payments shall be made in the following installments:

- a) \$1000 within 30 days of execution of the final settlement agreement.
- b) \$4,833 on or before December 31, 2007.
- c) For 2008 and 2009, equal quarterly installments of \$1458.33, with payments to be made on or before March 31, June 30, September 30, and December 31 of those years.

3. Fong and Tam acknowledge that the damages caused to Activision are much greater than this sum and in excess of at least \$750,000 but Fong and Tam represent that they are unable to pay the amount of damages due Activision and can pay only \$17,500 over three years because any greater amount would cause Fong and Tam to suffer a significant financial hardship. In addition to all other remedies in law or equity that are available to Activision, in the event Fong and/or Tam breach this settlement agreement, Activision may seek against the breaching party the damages and other remedies it is currently seeking in this Action.

4. Fong and Tam will fully and willingly cooperate with Activision in the investigation and litigation of this matter, including answering questions,

submitting to an interview and/or deposition and appearing as a witness in a trial if called by Activision to do so.

5. Subject to compliance with the terms of this Agreement and the issuance of the Consent Judgment and Permanent Injunction, Activision hereby releases Fong and Tam from any and all claims, demands, losses, costs, damages, and causes of action, known and unknown, which Activision may now hold or own, or has at any time heretofore held or owned, arising out of or in connection with the Action or arising out of or in any way relating to Fong's and Tam's employment with, or separation from, Activision. This release specifically includes, but is not limited to, the claims asserted in the Action; any claims for fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; assault and battery (sexual or otherwise); invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, overtime, bonuses, benefits, vacation pay, severance pay, attorneys' fees, or other compensation of any sort; retaliation, discrimination or harassment on the basis of race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any claim under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code (including but not limited to Section 132a), or Section 1981 of Title 42 of the United States Code; violation of COBRA; violation of any safety and health laws, statutes or regulations; violation of ERISA; violation of the Internal Revenue Code; or any other wrongful conduct, based upon events occurring prior to the Effective Date of this Agreement.

It is expressly recognized and acknowledged that this release does not extend to any Third Party, including but not limited to Jamie Yang, The Ant Commandos, Raymond Yow, Hong Lip Yow, Reverb Communications, Inc. and Doug Kennedy, and that this release does not constitute any form of license.

6. Fong and Tam hereby release Activision, its parents, subsidiaries and affiliates and their officers, directors, shareholders, successors, trustees, assigns, attorneys, and agents from any and all claims, demands, losses, costs, damages, and causes of action, known and unknown, which Fong and Tam may now hold or own, or have at any time heretofore held or owned, arising out of or in connection with the Action or arising out of or in any way relating to Fong's and Tam's employment with, or separation from, Activision. This release specifically includes, but is not limited to, the claims asserted in this Action; any claims for fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; assault and battery (sexual or otherwise); invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, overtime, bonuses, benefits, vacation pay, severance pay, attorneys' fees, or other compensation of any sort; retaliation, discrimination or harassment on the basis of race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any claim under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code (including but not limited to Section 132a), or Section 1981 of Title 42 of the United States Code; violation of COBRA; violation of any safety and health laws, statutes or regulations; violation of ERISA; violation

of the Internal Revenue Code; or any other wrongful conduct, based upon events occurring prior to the Effective Date of this Agreement.

7. The parties acknowledge that they have been advised by their respective legal counsel and are familiar with the provisions of the California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release, which, if known by him must have materially affected his settlement with the debtor.

The parties, being aware of said code section, all hereby expressly waive any rights thereunder, as well as under any other statutes or common law principals of similar effect.

8. The undersigned, and each of them, hereby warrant, represent, and agree that they and each of them are the sole and lawful owner of all right, title and interest in and to every claim and every matter which they purport to release hereby, and that they have not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claims or other matters herein released. The releasing party shall indemnify the released party against, and defend and hold it/him harmless from any claims arising out of or relating to such assignment or transfer, or for any such purported or attempted assignment or transfer, of any claims or other matters released herein.

9. Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation of law or fact, or warranty whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this instrument, and each signatory hereby

acknowledges that he, she, or it has not executed this instrument in reliance on any promise, representation, or warranty not contained herein.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each and all of their representatives, officers, directors, affiliates, partners, successors, assigns, employees and agents, if any.

11. The waiver of any breach of this Agreement by any party shall not be a waiver of any other breach of this Agreement.

12. This agreement has been executed by the parties hereto in California, and shall be governed by and construed in accordance with the internal laws (and not laws pertaining to conflicts or choice of law) of the State of California in all respects, including matters of validity, construction and performance of this Agreement. All parties consent to the exercise of personal jurisdiction over them in California and agree that any lawsuit arising out of or relating to this Agreement shall be brought exclusively in a court of competent subject matter jurisdiction located within the County of Los Angeles, State of California. In the event that any party to this Agreement attempts to set aside or to enforce this Agreement, or brings any action for a breach, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses. The parties to this Agreement shall each bear their own respective attorneys' fees and costs up to the signing of this Agreement.

13. This Agreement shall be construed without regard to the party or parties responsible for preparation of the same and shall be deemed as prepared jointly by the parties hereto.

14. All items and notices required by the terms of this Agreement and/or the Consent Judgment and Permanent Injunction shall be sent as follows:

A. To Activision: Activision Publishing, Inc., Attn. General Counsel,
3100 Ocean Park Blvd., Santa Monica, CA 90405, with a copy to

Michael A. Tomasulo, Jones Day, 555 S. Flower Street, Fiftieth Floor, Los Angeles, CA, 90071.

B. To Tam and Fong: Richard F. Cauley, Esq., WANG HARTMANN & GIBBS PC, 1301 Dove Street, Suite 1050, Newport Beach, California 92660.

15. This Agreement constitutes the entire Agreement of the parties and supersedes all prior or extemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof. Each of the parties hereto states that it has read each of the paragraphs of this Agreement and that it is freely and voluntarily entering into this Agreement and that it understands the same and understands the legal obligations thereby created.

16. Each party executing this Agreement represents and warrants that it/he/she has full authority and power to do so and all necessary resolutions and authorizations have been obtained.

17. If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall, to the extent possible, be adjusted rather than voided in order to achieve the intent of the parties. The invalidity or unenforceability of any provision of this Agreement shall not adversely affect the validity or enforceability of any of the remainder of this Agreement.

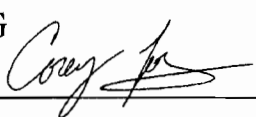
18. Each party acknowledges that it has had an opportunity to review this Agreement and the legal implications of it with its own counsel.

19. The parties agree that the terms of this Agreement, with the exception of the Consent Judgment and Permanent Injunction, are confidential and that the parties to this Agreement, their agents, employees, servants and persons acting in concert with any party shall not cause or suffer the disclosure of the terms of this Agreement to any third party including Defendants Jamie Yang, Reverb Communications, Doug Kennedy, The Ant Commandos, Raymond Yow and Hong

Lip Yow, except (a) as reasonably necessary to enforce rights under this Agreement or the Consent Judgment and Permanent Injunction, (b) as reasonably necessary by Activision for purposes of disclosure as may be required of it by any law, statute or regulation, either state or federal, the policies of the U.S. Securities and Exchange Commission or its stock exchange, (c) where a disclosure is reasonably required to any tax consultant, attorney, accountant, or other financial advisor who is consulted by a party to this Agreement regarding the tax consequences, if any, of any payments made or received under this Agreement, provided the disclosure is in confidence; and (d) under judicial or governmental subpoena, demand or requirement, and the party agrees to request provisions of confidentiality.

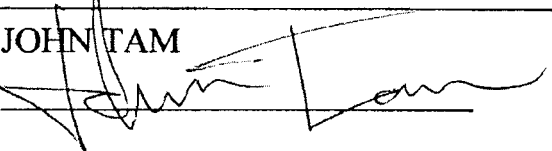
This Agreement shall become binding as of the Effective Date hereof. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF the authorized representatives of the parties have duly executed this Agreement.

ACTIVISION PUBLISHING, INC. By: _____ Dated: _____, 2007	JOHN TAM _____ Dated: _____, 2007
COREY FONG  _____ Dated: <u>MARCH 27</u> , 2007	

20. This Agreement shall become binding as of the Effective Date hereof.
This Agreement may be executed in counterparts.

IN WITNESS WHEREOF the authorized representatives of the parties have duly
executed this Agreement.

<p>ACTIVISION PUBLISHING, INC.</p> <p>By: _____</p> <p>Dated: _____, 2007</p>	<p>JOHN TAM</p>  <p>Dated: <u>3-27</u>, 2007</p>
<p>COREY FONG</p> <p>_____</p> <p>Dated: _____, 2007</p>	

CONFIDENTIAL APPENDIX A

- An effects foot pedal that functions with the Guitar Hero™ or Guitar Hero II™ games.
- An adapter, hardware, software or other device or method for making a peripheral device for the Sony PlayStation®2 game console compatible with the Sony PlayStation®3 game console.

CONFIDENTIAL APPENDIX B

- Radio Disney
- Buena Vista Games, Inc.
- NickToons/Nickelodeon
- High School Musical
- Harmonix Music Systems, Inc.
- MTV Networks
- Aspyr Media, Inc.
- Roxor Games, Inc.
- Chris Danford
- Glen Maynard

CONFIDENTIAL APPENDIX C

- Honeybee
- Berway Technology LTD
- Mayflash

EXHIBIT B

CONFIDENTIAL SETTLEMENT AGREEMENT

WHEREAS, this Agreement is effective as of April 10, 2007 ("Effective Date") between Activision Publishing, Inc. ("Activision"), on the one hand, and Jamie Yang, on the other.

WHEREAS, in Case No. CV 07-00464 PA (Ex) (the "Action"), plaintiff Activision alleges claims against John Tam, Jamie Yang, Corey Fong, Doug Kennedy, Hong Lip Yow, Raymond Yow, Reverb Communications, Inc., and The Ant Commandos, Inc. (collectively, "Defendants") for: 1) Copyright Infringement, 2) Lanham Act Violation, 3) Violation Of Computer Fraud And Abuse Act, 4) Violation Of California Penal Code § 502, 5) Misappropriation Of Trade Secrets, 6) Misappropriation Of Confidential Information, 7) Breach Of Contract, 8) Breach Of Fiduciary Duty And Duty Of Loyalty, 9) Interference With Contractual Relations, 10) Interference With Prospective Economic Advantage, 11) Statutory Unfair Competition, 12) Common-Law Unfair Competition, and 13) Conversion;

WHEREAS, to avoid the expense and inconvenience of further litigation and legal proceedings and to fully and finally settle all disputes and controversies between them relating to this Action, Activision and Yang have agreed to settle this Action and all claims arising out of or related to this Action in accordance with the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Activision and Yang agree as follows:

1. Activision and Yang have authorized their counsel to execute and file a Consent Judgment and Permanent Injunction in the form attached hereto as Exhibit A. The terms and admissions set forth in the Consent Judgment and Permanent Injunction are expressly incorporated in this Agreement by reference as if fully set forth herein. The Consent Judgment and Permanent Injunction shall not

be construed to enjoin Yang from future employment with a company that has a then-existing and active relationship with any of Activision's vendors as set forth in Confidential Appendix C provided that such relationship was not created by Yang and predates Yang's employment with that company. Notwithstanding this, Yang shall still be bound by all other terms of the Permanent Injunction with respect to such employment.

2. Yang shall each pay Activision the amount of seventeen thousand five hundred dollars (\$17,500). Payment shall be made to Activision Publishing, Inc., Attn. General Counsel, 3100 Ocean Park Blvd., Santa Monica, CA 90405. Payment in full shall be made on or before June 30, 2007.

3. Yang acknowledges that the damages caused to Activision are much greater than this sum and in excess of at least \$750,000 but Yang represents that she is unable to pay the amount of damages due Activision because any greater amount would cause her to suffer a significant financial hardship. In addition to all other remedies in law or equity that are available to Activision, in the event Yang breaches this settlement agreement, Activision may seek against Yang the damages and other remedies it is currently seeking in this Action.

4. Yang will fully and willingly cooperate with Activision in the investigation and litigation of this matter, including answering questions, submitting to an interview and/or deposition and appearing as a witness in a trial if called by Activision to do so.

5. Subject to compliance with the terms of this Agreement and the issuance of the Consent Judgment and Permanent Injunction, Activision hereby releases Yang from any and all claims, demands, losses, costs, damages, and causes of action, known and unknown, which Activision may now hold or own, or has at any time heretofore held or owned, arising out of or in connection with the Action or arising out of or in any way relating to Yang's employment with, or

separation from, Activision. This release specifically includes, but is not limited to, the claims asserted in the Action; any claims for fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; assault and battery (sexual or otherwise); invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, overtime, bonuses, benefits, vacation pay, severance pay, attorneys' fees, or other compensation of any sort; retaliation, discrimination or harassment on the basis of race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any claim under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code (including but not limited to Section 132a), or Section 1981 of Title 42 of the United States Code; violation of COBRA; violation of any safety and health laws, statutes or regulations; violation of ERISA; violation of the Internal Revenue Code; or any other wrongful conduct, based upon events occurring prior to the Effective Date of this Agreement. It is expressly recognized and acknowledged that this release does not extend to any Third Party, including but not limited to The Ant Commandos, Raymond Yow, Hong Lip Yow, Reverb Communications, Inc. or Doug Kennedy, and that this release does not constitute any form of license.

6. Yang hereby releases Activision, its parents, subsidiaries and affiliates and their officers, directors, shareholders, successors, trustees, assigns, attorneys, and agents from any and all claims, demands, losses, costs, damages, and causes of action, known and unknown, which Yang may now hold or own, or has at any time heretofore held or owned, arising out of or in connection with the Action or arising

out of or in any way relating to Yang's employment with, or separation from, Activision. This release specifically includes, but is not limited to, the claims asserted in this Action; any claims for fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; assault and battery (sexual or otherwise); invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, overtime, bonuses, benefits, vacation pay, severance pay, attorneys' fees, or other compensation of any sort; retaliation, discrimination or harassment on the basis of race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any claim under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code (including but not limited to Section 132a), or Section 1981 of Title 42 of the United States Code; violation of COBRA; violation of any safety and health laws, statutes or regulations; violation of ERISA; violation of the Internal Revenue Code; or any other wrongful conduct, based upon events occurring prior to the Effective Date of this Agreement.

7. The parties acknowledge that they have been advised by their respective legal counsel and are familiar with the provisions of the California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which, if

known by him or her must have materially affected his or her settlement with the debtor.

The parties, being aware of said code section, all hereby expressly waive any rights thereunder, as well as under any other statutes or common law principals of similar effect.

8. The undersigned, and each of them, hereby warrant, represent, and agree that they and each of them are the sole and lawful owner of all right, title and interest in and to every claim and every matter which they purport to release hereby, and that they have not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claims or other matters herein released. The releasing party shall indemnify the released party against, and defend and hold it/him harmless from any claims arising out of or relating to such assignment or transfer, or for any such purported or attempted assignment or transfer, of any claims or other matters released herein.

9. Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation of law or fact, or warranty whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this instrument, and each signatory hereby acknowledges that he, she, or it has not executed this instrument in reliance on any promise, representation, or warranty not contained herein.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each and all of their representatives, officers, directors, affiliates, partners, successors, assigns, employees and agents, if any.

11. The waiver of any breach of this Agreement by any party shall not be a waiver of any other breach of this Agreement.

12. This agreement has been executed by the parties hereto in California, and shall be governed by and construed in accordance with the internal laws (and not laws pertaining to conflicts or choice of law) of the State of California in all respects, including matters of validity, construction and performance of this Agreement. All parties consent to the exercise of personal jurisdiction over them in California and agree that any lawsuit arising out of or relating to this Agreement shall be brought exclusively in a court of competent subject matter jurisdiction located within the County of Los Angeles, State of California. In the event that any party to this Agreement attempts to set aside or to enforce this Agreement, or brings any action for a breach, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses. The parties to this Agreement shall each bear their own respective attorneys' fees and costs up to the signing of this Agreement.

13. This Agreement shall be construed without regard to the party or parties responsible for preparation of the same and shall be deemed as prepared jointly by the parties hereto.

14. All items and notices required by the terms of this Agreement and/or the Consent Judgment and Permanent Injunction shall be sent as follows:

A. To Activision: Activision Publishing, Inc., Attn. General Counsel, 3100 Ocean Park Blvd., Santa Monica, CA 90405, with a copy to Michael A. Tomasulo, Jones Day, 555 S. Flower Street, Fiftieth Floor, Los Angeles, CA 90071.

B. To Yang: Richard F. Cauley, Esq., WANG HARTMANN & GIBBS PC, 1301 Dove Street, Suite 1050, Newport Beach, California 92660.

15. This Agreement constitutes the entire Agreement of the parties and supersedes all prior or extemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof. Each of the parties hereto

states that it has read each of the paragraphs of this Agreement and that it is freely and voluntarily entering into this Agreement and that it understands the same and understands the legal obligations thereby created.

16. Each party executing this Agreement represents and warrants that it/he/she has full authority and power to do so and all necessary resolutions and authorizations have been obtained.

17. If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall, to the extent possible, be adjusted rather than voided in order to achieve the intent of the parties. The invalidity or unenforceability of any provision of this Agreement shall not adversely affect the validity or enforceability of any of the remainder of this Agreement.

18. Each party acknowledges that it has had an opportunity to review this Agreement and the legal implications of it with its own counsel.

19. The parties agree that the terms of this Agreement, with the exception of the Consent Judgment and Permanent Injunction, are confidential and that the parties to this Agreement, their agents, employees, servants and persons acting in concert with any party shall not cause or suffer the disclosure of the terms of this Agreement to any third party including Defendants John Tam, Corey Fong, Reverb Communications, Doug Kennedy, The Ant Commandos, Raymond Yow and Hong Lip Yow, except (a) as reasonably necessary to enforce rights under this Agreement or the Consent Judgment and Permanent Injunction, (b) as reasonably necessary by Activision for purposes of disclosure as may be required of it by any law, statute or regulation, either state or federal, the policies of the U.S. Securities and Exchange Commission or its stock exchange, (c) where a disclosure is reasonably required to any tax consultant, attorney, accountant, or other financial advisor who is consulted by a party to this Agreement regarding the tax consequences, if any, of any payments made or received under this Agreement,

provided the disclosure is in confidence; and (d) under judicial or governmental subpoena, demand or requirement, and the party agrees to request provisions of confidentiality.

20. This Agreement shall become binding as of the Effective Date hereof. This Agreement may be executed in counterparts.

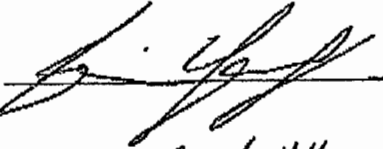
IN WITNESS WHEREOF the authorized representatives of the parties have duly executed this Agreement.

ACTIVISION PUBLISHING, INC. — By: <u>Meg Dautsch</u> Dated: <u>April 16</u> , 2007
JAMIE YANG _____ Dated _____, 2007

provided the disclosure is in confidence; and (d) under judicial or governmental subpoena, demand or requirement, and the party agrees to request provisions of confidentiality.

20. This Agreement shall become binding as of the Effective Date hereof. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF the authorized representatives of the parties have duly executed this Agreement.

ACTIVISION PUBLISHING, INC. By: _____ Dated: _____, 2007
JAMIE YANG  Dated: <u>April 11th</u> , 2007

CONFIDENTIAL APPENDIX A

- An effects foot pedal that functions with the Guitar Hero™ or Guitar Hero II™ games.
- An adapter, hardware, software or other device or method for making a peripheral device for the Sony PlayStation®2 game console compatible with the Sony PlayStation®3 game console.

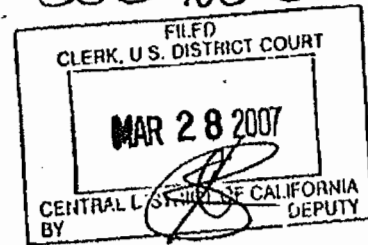
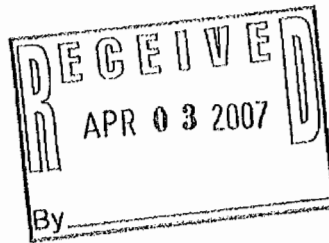
CONFIDENTIAL APPENDIX B

- Radio Disney
- Buena Vista Games, Inc.
- NickToons/Nickelodeon
- High School Musical
- Harmonix Music Systems, Inc.
- MTV Networks
- Aspyr Media, Inc.
- Roxor Games, Inc.
- Chris Danford
- Glen Maynard

CONFIDENTIAL APPENDIX C

- Honeybee
- Berway Technology LTD
- Mayflash

EXHIBIT C



RECEIVED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ACTIVISION PUBLISHING, INC., a
Delaware corporation,

Plaintiff,

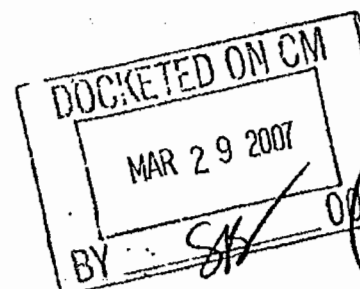
JOHN TAM, an individual, JAMIE
YANG, an individual, COREY FONG,
an individual, DOUG KENNEDY, an
individual, HONG LIP YOW, an
individual, RAYMOND YOW, an
individual, REVERB
COMMUNICATIONS, INC., a
California corporation, and THE ANT
COMMANDOS, INC., a California
corporation,

Defendants.

Case No. CV 07-00464 PA (Ex)

~~PROPOSED~~ CONSENT
JUDGMENT AND PERMANENT
INJUNCTION AS TO
DEFENDANTS JOHN TAM
AND COREY FONG

LODGED



1 WHEREAS plaintiff Activision Publishing, Inc. ("Activision") and
2 defendants John Tam ("Tam"), and Corey Fong ("Fong") (collectively
3 "Defendants") have agreed in a separate confidential agreement to settlement of the
4 matters in issue between them and to entry of this Consent Judgment and
5 Permanent Injunction, it is hereby ORDERED, ADJUDGED, AND DECREED
6 THAT:

7 1. Activision alleged claims against Tam and Fong for: (1) copyright
8 infringement under 17 U.S.C. § 501, *et seq.*; (2) violation of Section 43(a) of the
9 Lanham Act under 15 U.S.C. § 1125(a); (3) violation of the Computer Fraud and
10 Abuse Act pursuant to 18 U.S.C. §§ 1030(a)(4) and (a)(5)(B); (4) violation of
11 California Penal Code § 502; (5) misappropriation of trade secrets under California
12 Civil Code §§ 3426, *et seq.*; (6) misappropriation of confidential information; (7)
13 breach of contract; (8) breach of duty of loyalty and fiduciary duty; (9) statutory
14 unfair competition under California Business and Professions Code § 17200, *et*
15 *seq.*; (10) common law unfair competition; and (11) conversion.

16 2. This Court has jurisdiction over all of the parties in this action and
17 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a) and 1367(a), as
18 well as 15 U.S.C. § 1121(a) and 18 U.S.C. § 1030(g). This Court further has
19 continuing jurisdiction to enforce the terms and provisions of this Consent
20 Judgment and Permanent Injunction. Venue is also proper in this Court pursuant to
21 28 U.S.C. §§1391(b).

22 3. Plaintiff Activision is a Delaware corporation, having its principal
23 place of business at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

24 4. Defendant Tam, an individual who resides in Milpitas, California, was
25 until recently an employee of Activision.

26 5. Defendant Fong, an individual who resides in Foster City, California,
27 was until recently an employee of Activision.
28

1 6. Tam and Fong communicated with Doug Kennedy ("Kennedy"),
2 Reverb Communications, Inc. ("Reverb"), The Ant Commandos ("TAC"), Hong
3 Lip Yow ("H. Yow") and Raymond Yow ("R. Yow") to form a company, referred
4 to initially as Hourglass Interactive and then, ultimately, Lodestone Entertainment,
5 Inc., to compete with Activision using Activision's confidential and proprietary
6 information that Tam and Fong had obtained from Activision. (Hereinafter,
7 Defendants' contemplated business venture is referred to as "Lodestone"). Through
8 Lodestone, Defendants planned to sell a video game ("Defendants' Game") in
9 competition with Activision's award-winning rhythm based music games called
10 Guitar Hero™ and Guitar Hero II™ (collectively the "Guitar Hero™ franchise").

11 7. Activision is the owner of the copyrights in the audiovisual material
12 associated with the Guitar Hero™ franchise, which copyrights have been
13 registered, including Copyright Registration PA-1-322-764 for Guitar Hero™. This
14 copyright is valid and enforceable throughout the United States.

15 8. Lodestone intended to target a confidential and proprietary Activision
16 corporate opportunity for the Guitar Hero™ franchise involving a certain
17 confidential third party (the "Third Party")¹ that was known to Tam and Fong by
18 virtue of their employment with Activision.

19 9. Tam, working with Fong, directed an Activision employee and
20 Activision independent contractors to develop, at Activision's expense, a demo of
21 Defendants' Game (the "Tam Demo") for use by Defendants. Defendants
22 reproduced, displayed, published, distributed, sold and/or promoted the Tam Demo
23 without Activision's authorization or consent.

24
25
26 ¹ Because the identity of the Third Party is Activision confidential and trade
27 secret information, the name of this party is not disclosed in this Consent Judgment
28 and Permanent Injunction but may be found in Appendix B to the confidential
Settlement Agreement between the parties.

1 10. Defendants intended to and did use the Tam Demo, to solicit partners
2 and funds for Lodestone. The Defendants' decision to target and/or partner with
3 the Third Party was based on Activision's confidential and trade secret information.

4 11. Defendants each signed Activision's Form of Employee Proprietary
5 Information Agreement ("Proprietary Information Agreement") obligating
6 themselves to hold in strict confidence, and not use or disclose except for the
7 benefit of Activision, Activision Proprietary Information.² Fong and Tam each
8 explicitly acknowledge and agree that the Proprietary Information Agreements they
9 signed constitute valid and binding agreements. Fong and Tam also each explicitly
10 acknowledge and agree that Activision Proprietary Information includes, but is not
11 limited to the following confidential and trade secret information, which derives
12 independent economic value from not being generally known to the public or to
13 other persons who can obtain economic value from its disclosure or use:

14
15
16 ² "Activision Proprietary Information" includes all Activision confidential and
17 trade secret information and, as set forth in the Employee Proprietary Information
Agreement signed by Tam, Yang and Fong, specifically includes:

18 any and all trade secrets, confidential knowledge, data or any
19 other proprietary information pertaining to any business of the
20 Company or any of its clients, customers or consultants,
21 licensees or affiliates. By way of illustration but not limitation,
22 "Proprietary Information" includes (a) inventions, ideas,
23 improvements, discoveries, trade secrets, processes, data,
24 programs, knowledge, know-how, designs, techniques, formulas,
25 test data, computer code, other works of authorship and designs
26 whether or not patentable, copyrightable, or otherwise protected
27 by law, and whether or not conceived of or prepared by me,
28 either alone or jointly with others (hereinafter collectively
referred to as "Inventions"); (b) information regarding research,
development, new products and services, marketing plans and
strategies, merchandising and selling, business plans, strategies,
forecasts, projections, profits, investments, operations,
financings, records, budgets and unpublished financial
statements, licenses, prices and costs, suppliers and customers;
and (c) identity, requirements, preferences, practices and
methods of doing business of specific parties with whom the
Company transacts business, and information regarding the
skills and compensation of other employees of the Company and
independent contractors performing services for the Company.

- 1 (a) Financial information related to the Guitar Hero™ franchise,
2 including but not limited to, profit and loss information, cost
3 information, expenses, contract terms, sales numbers and
4 forecasts, information contained in the Guitar Hero II™ Budget
5 Summary, information contained in the Guitar Hero II™ North
6 American Xbox 360™ Strategy PowerPoint, information
7 contained in the Variable Sales & Marketing spreadsheet,
8 (b) Marketing information related to the Guitar Hero™ franchise,
9 including but not limited to marketing partners, contract terms,
10 marketing categories, information contained in the Guitar
11 Hero™ franchise plans, and identified growth areas for the
12 Guitar Hero™ franchise,
13 (c) Product information related to the Guitar Hero™ franchise,
14 including but not limited to product design, such as the design
15 for the Guitar Hero II™ Xbox 360™ controller design, future
16 product ideas and designs,
17 (d) Profit and loss statements developed by Tam, Fong and/or Yang
18 which were derived from Guitar Hero™ financial information,
19 including such statements developed for Hourglass Interactive
20 and/or Lodestone Entertainment,
21 (e) Information related to music licensing and in game advertising
22 for the Guitar Hero™ franchise, including but not limited to
23 contract terms, identities of possible future songs and artists to
24 include, and identities of partners for licensing or in game
25 advertising, and
26 (f) Vendor information related to the Guitar Hero™ franchise,
27 including but not limited to vendor identities and contact lists,
28 vendor pricing, and vendor contract terms.

1 12. Tam entered into a binding and valid employment agreement with
2 Activision. This contract required that, among other things, the term of Tam's
3 employment would continue until May 31, 2007, and that during that time he would
4 not work for any Activision competitor. TAC is an Activision competitor.

5 13. THEREFORE, it is hereby further ORDERED, ADJUDGED AND
6 DECREED THAT:

7 A. John Tam and Corey Fong, their, officers, directors, agents, servants,
8 employees, attorneys, and those in active concert or participation with any
9 of them who receive actual notice of this injunction by personal service or
10 otherwise ARE RESTRAINED AND ENJOINED from:

- 11 1. Copying, distributing, displaying or using any content derived or
12 copied from the Guitar Hero™ or Guitar Hero II™ video game;
- 13 2. Copying, distributing, displaying or using the game demo created by
14 John Tam based on Guitar Hero™ and StepMania, screenshots of
15 which are attached hereto as Exhibit 1 (the "Tam Demo") and/or
16 copying, distributing, displaying or using any content derived or copied
17 therefrom;
- 18 3. Manufacturing, selling, offering for sale, advertising or distributing the
19 Tam Demo, or any rhythm based video game including or derived from
20 any Activision Proprietary Information;
- 21 4. Taking any steps to develop, market, manufacture, sell or distribute
22 any guitar, synthesizer or drum based video games, including any
23 peripherals for those games, for a period of one (1) year;
- 24 5. Using, disclosing, transferring, distributing or reproducing any
25 Activision Proprietary Information and any materials or information
26 derived therefrom, including but not limited to, using it in connection
27 with developing a music or rhythm based game, or in starting a
28

1 company, said Activision Proprietary Information including but not
2 limited to:

- 3 • Financial information related to the Guitar Hero™ franchise,
4 including but not limited to, profit and loss information, cost
5 information, expenses, contract terms, sales numbers and
6 forecasts, information contained in the Guitar Hero II™ Budget
7 Summary, information contained in the Guitar Hero II™ North
8 American Xbox 360™ Strategy PowerPoint, information
9 contained in the Variable Sales & Marketing spreadsheet,
- 10 • Marketing information related to the Guitar Hero™ franchise,
11 including but not limited to marketing partners, contract terms,
12 marketing categories, information contained in the Guitar
13 Hero™ franchise plans, and identified growth areas for the
14 Guitar Hero™ franchise,
- 15 • Product information related to the Guitar Hero™ franchise,
16 including but not limited to product design, such as the design
17 for the Guitar Hero II™ Xbox 360™ controller design, future
18 product ideas and designs,
- 19 • Profit and loss statements developed by John Tam, Corey Fong
20 and/or Jamie Yang which were derived from Guitar Hero™
21 financial information, including such statements developed for
22 Hourglass Interactive and/or Lodestone Entertainment,
- 23 • Information related to music licensing and in game advertising
24 for the Guitar Hero™ franchise, including but not limited to
25 contract terms, identities of possible future songs and artists to
26 include, and identities of partners for licensing or in game
27 advertising, and
28

- 1 • Vendor information related to the Guitar Hero™ franchise,
2 including but not limited to vendor identities and contact lists;
3 vendor pricing, and vendor contract terms;
- 4 6. Taking any steps to develop, market, manufacture, sell or distribute
5 any guitar controller intended to be compatible with Activision's
6 Guitar Hero II™ game for the Microsoft Xbox 360™ game console
7 until six months after Activision commercially releases the Activision
8 Guitar Hero II™ game for the Microsoft Xbox 360™ game console;
- 9 7. Taking any steps to develop, market, manufacture, sell or distribute
10 any of the confidential peripheral devices disclosed in Appendix A
11 until six months after Activision commercially releases such a device;
- 12 8. Disclosing, transferring, distributing, reproducing or using any of the
13 business plans developed by Jamie Yang, Corey Fong or John Tam or
14 otherwise derived from those individuals for The Ant Commandos or
15 for the business venture referred to variously as Hourglass Interactive
16 and Lodestone Entertainment;
- 17 9. Soliciting Activision employees for a period of one (1) year;
- 18 10. Soliciting any of the Activision partners and growth areas identified in
19 Appendix B to the confidential Settlement Agreement for a period of
20 one (1) year; and
- 21 11. Soliciting any of the manufacturing vendors identified in Appendix C
22 to the confidential Settlement Agreement for a period of one (1) year.
- 23
- 24
- 25
- 26
- 27
- 28


- 1 B. Defendants shall, within five (5) days of entry of this Consent Judgment and
2 Permanent Injunction, deliver the documents and things listed below in their
3 possession, custody or control and shall file a written certification with the
4 Court stating that they have done so and have not retained any such
5 documents and things or any copies, electronic or otherwise, of such things:
- 6 1. All Activision property, including but not limited to documents, files,
7 materials and things containing or derived from Activision Proprietary
8 Information and/or that Defendants acquired, received, developed or
9 worked on during the period of time that they worked for Activision
10 having anything to do with the video game business; and
 - 11 2. All documents, files, materials and things related to the business
12 venture Hourglass Interactive and/or Lodestone Entertainment and/or
13 otherwise related to any communications with or involving Reverb,
14 The Ant Commandos, Doug Kennedy, Hong Lip Yow, Raymond Yow
15 and/or any third party with whom you communicated related to the
16 business venture Hourglass Interactive and/or Lodestone
17 Entertainment.
- 18 C. Defendants shall, within five (5) days of the entry of this Consent Judgment
19 and Permanent Injunction, disclose in writing to Activision all disclosures of
20 information, documents or materials related to or referring to Activision's
21 business or products or to the Tam Demo to third parties, including a
22 description of what was disclosed and the identity of any third parties
23 receiving such information and shall file a written certification with the Court
24 stating that they have done so.
- 25 D. Service by mail upon the counsel of record of a copy of this Consent
26 Judgment and Permanent Injunction entered by the Court is deemed
27 sufficient notice to Defendants under Rule 65(d) of the Federal Rules of Civil
28

1 Procedure. It shall not be necessary for any Defendant to sign any form of
2 acknowledgement of service.

3 E. Except as otherwise provided for in the Settlement Agreement, the parties
4 shall bear their own attorneys' fees and costs.

5
6 **IT IS SO ORDERED.**

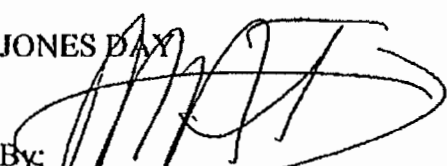
7 Dated: March 27, 2007

8 By: 
Hon. Percy Anderson
United States District Judge

9
10
11 **APPROVED AS TO FORM AND CONTENT:**

12
13 Dated: March 26, 2007

JONES DAY

14
15 By: 
Michael A. Tomasulo

16
17 Attorneys for Plaintiff
ACTIVISION PUBLISHING, INC.

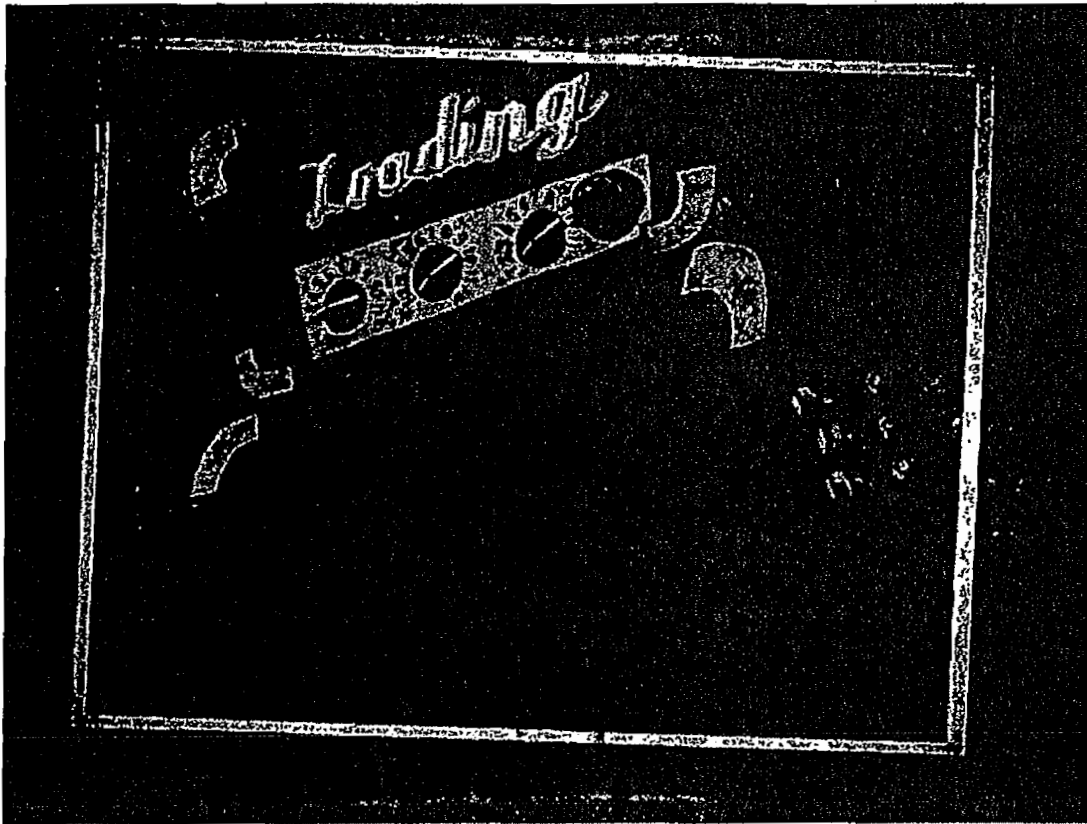
18
19 Dated: March 26, 2007

WANG HARTMANN & GIBBS PC

20
21 By: 
Richard Cauley

22
23 Attorneys for Defendants
JOHN TAM, JAMIE YANG, COREY FONG

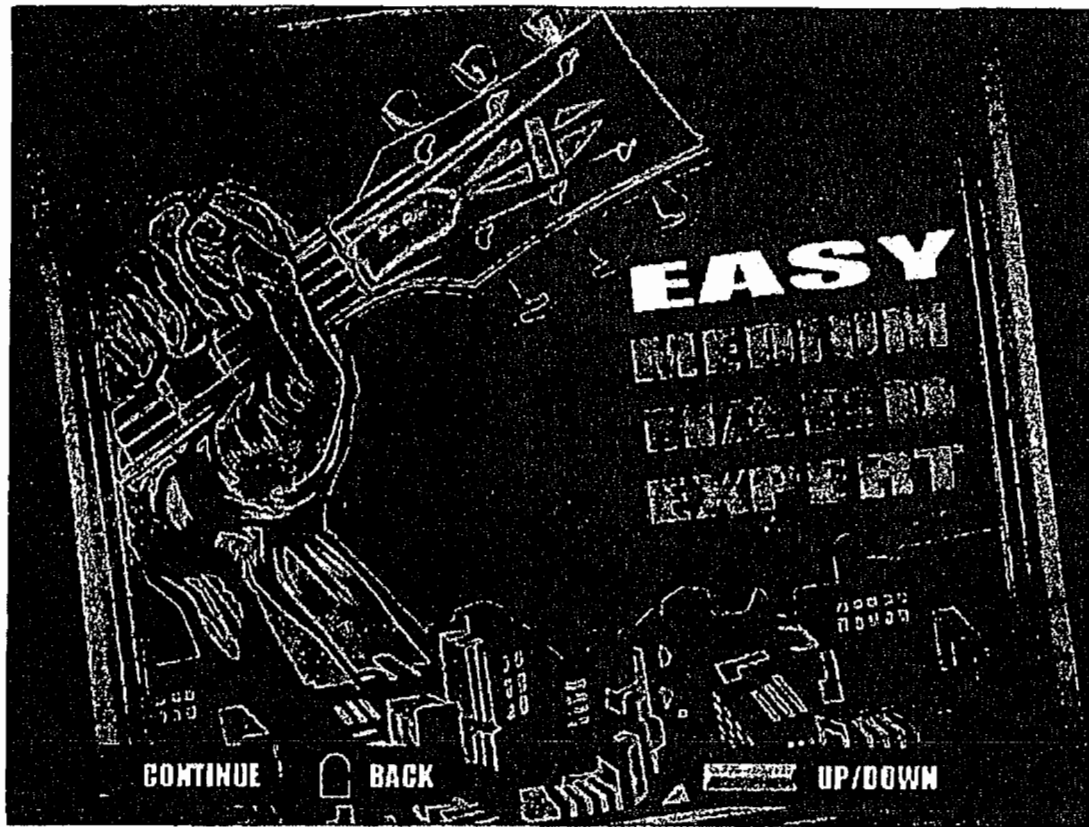
SCANNED



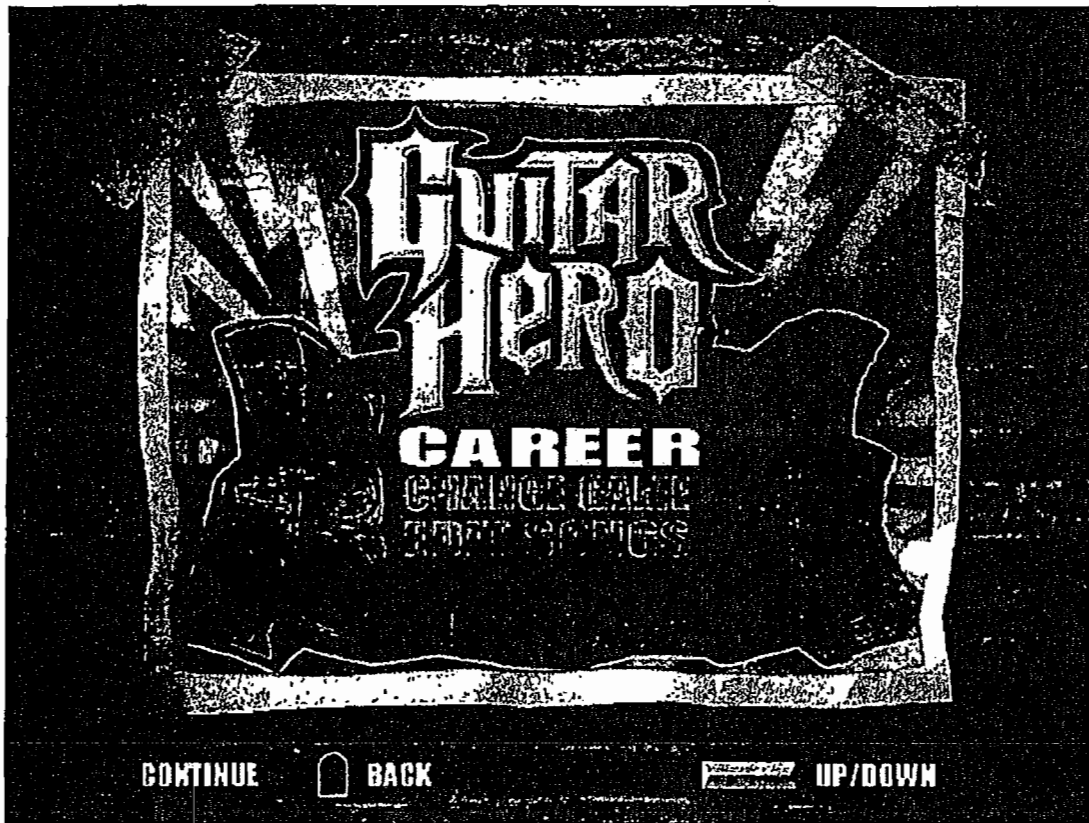
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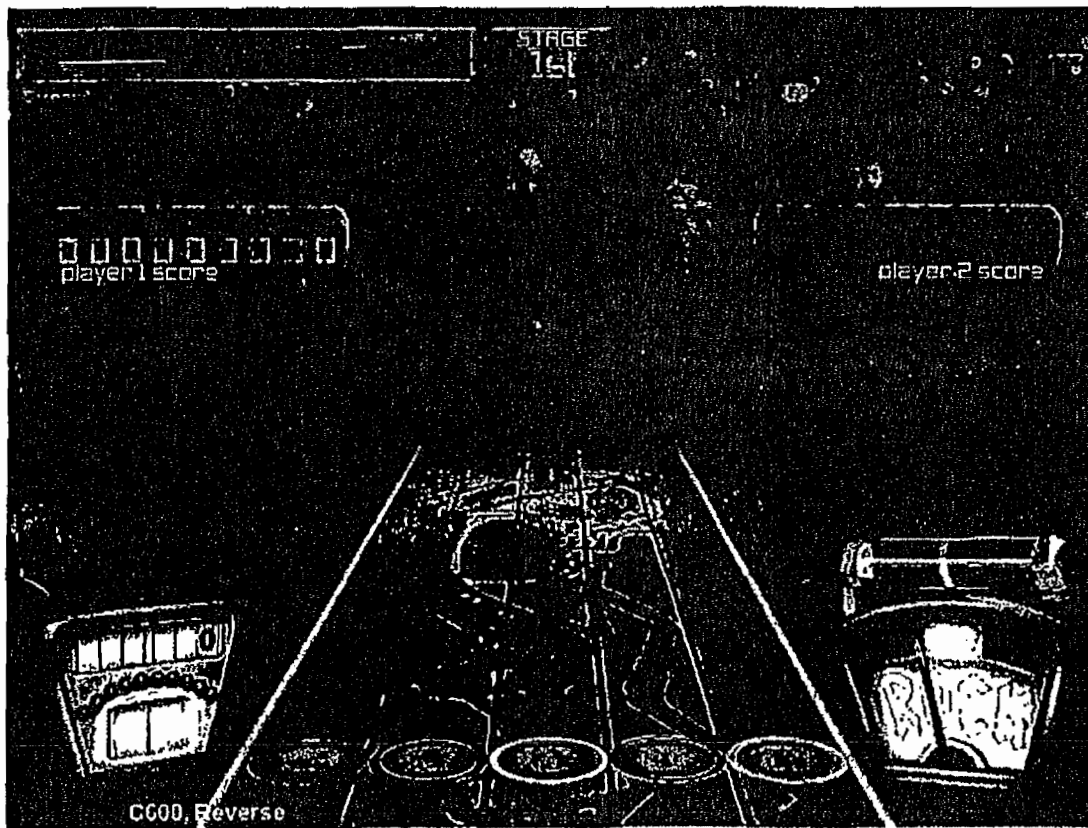
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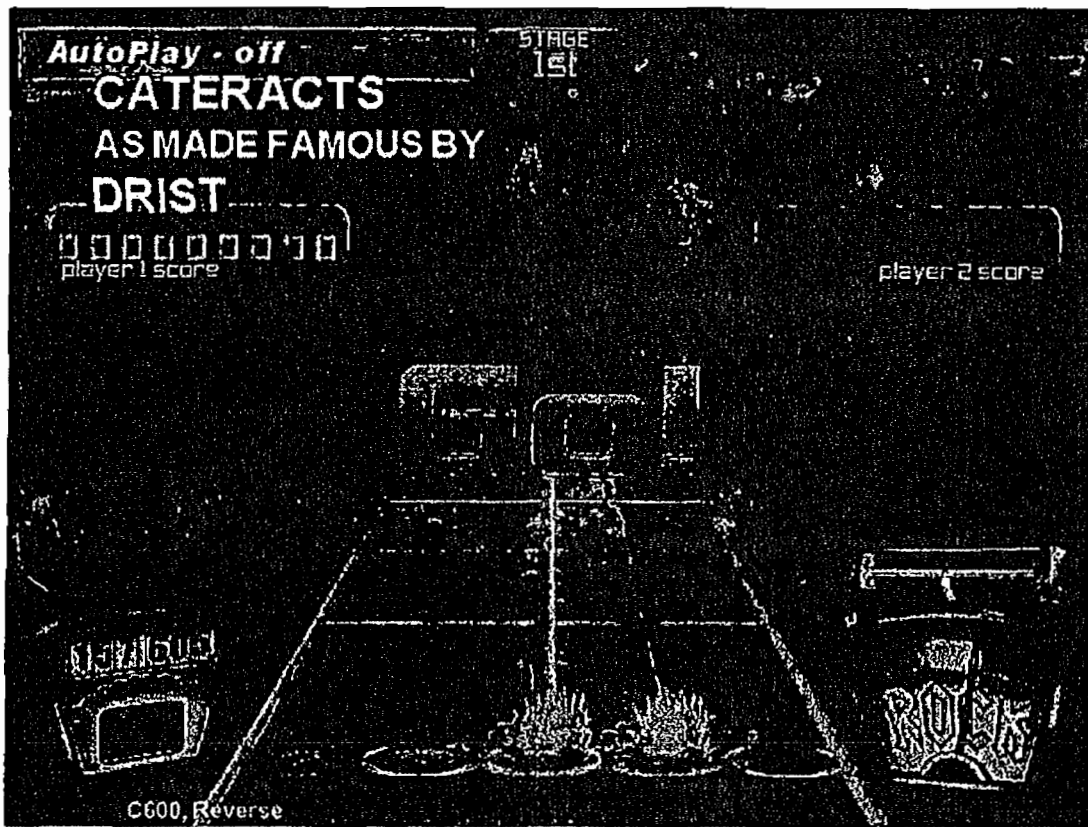
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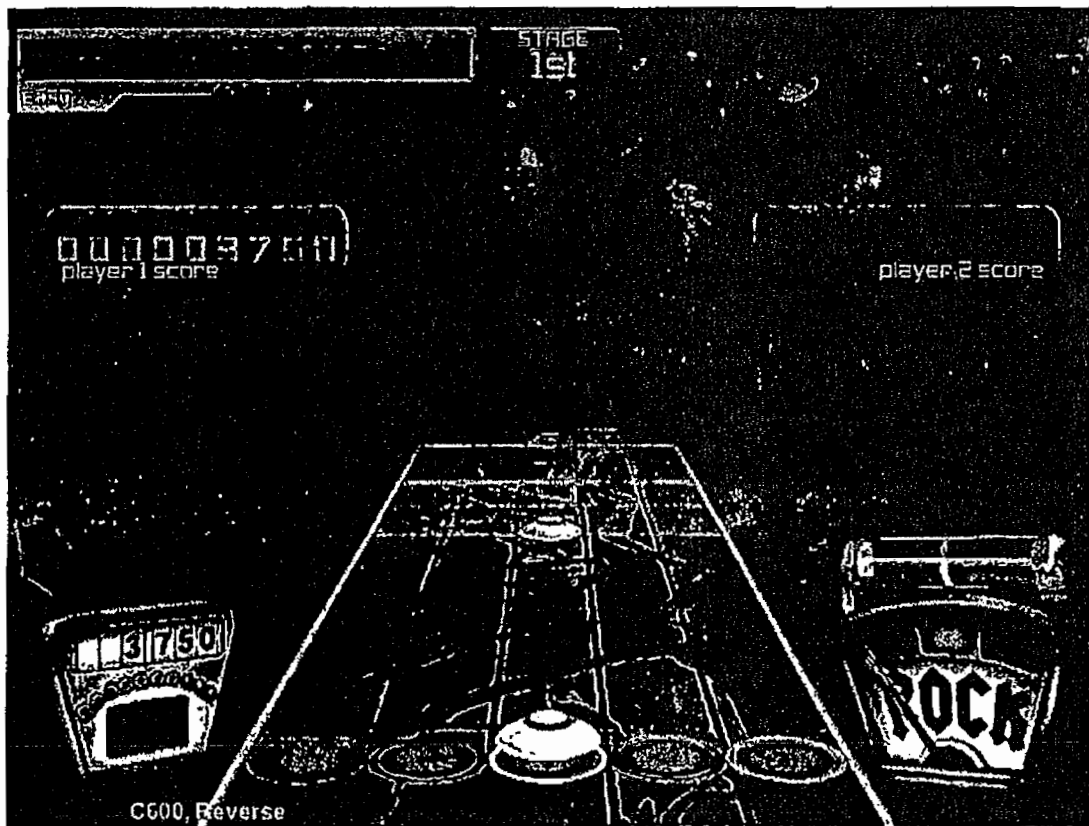
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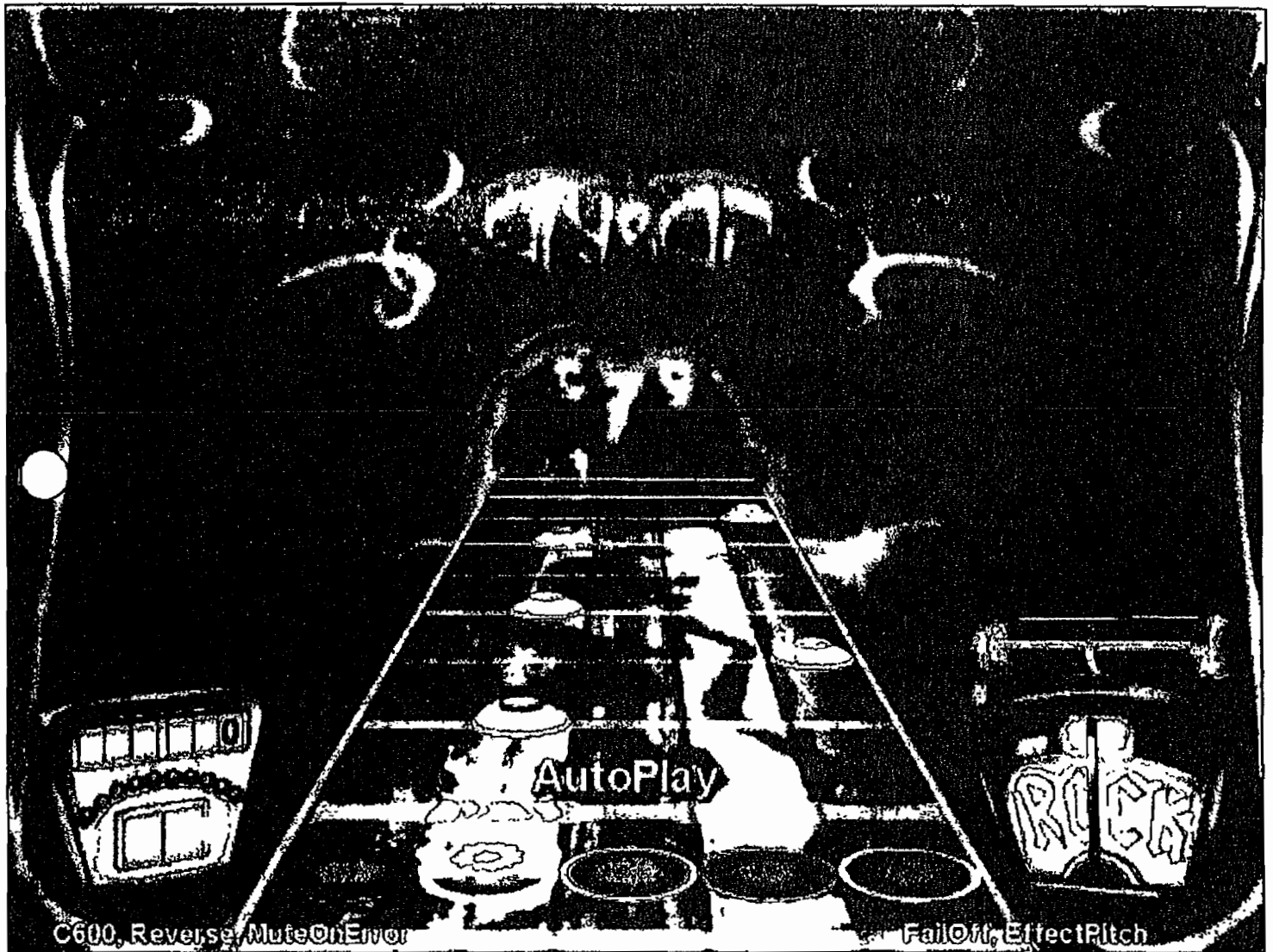
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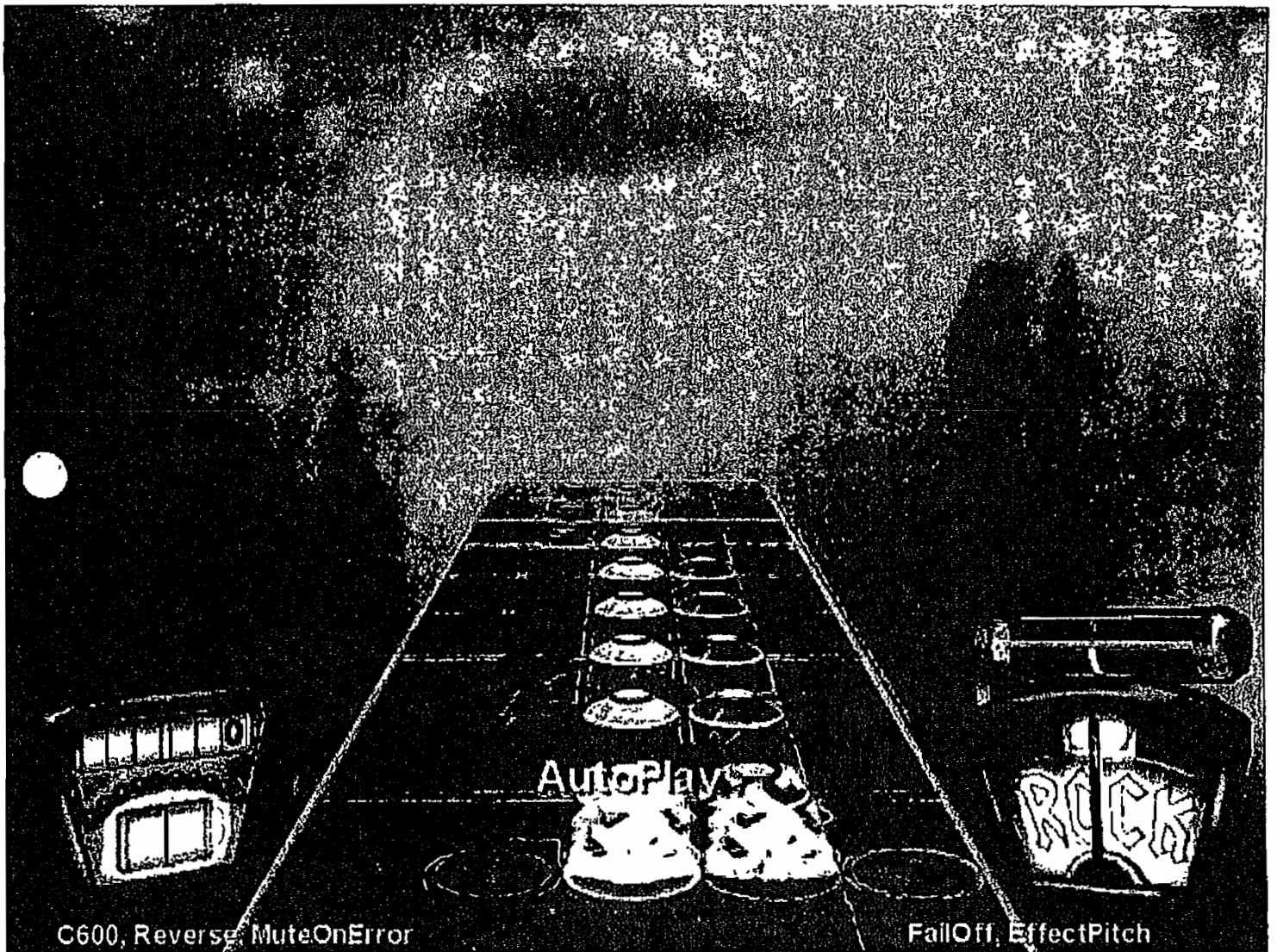
SCANNED



SEALING



SCANNED



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 S Flower Street, 50th Floor, Los Angeles, California 90071.

On March 26, 2007, I caused to be served the foregoing document described as [PROPOSED] CONSENT JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS JOHN TAM AND COREY FONG on all other parties to this action addressed as follows:

Richard F. Cauley, Esq.
Wang, Hartmann & Gibbs, PC
1301 Dove Street, Suite 1050
Newport Beach, CA 92660
Facsimile: 949-833-2281
E-mail: rcauley@whglawfirm.com

Kurt E. Wilson, Esq.
Sweeney, Mason, Wilson & Bosomworth
983 University Avenue, Suite 104C
Los Gatos, CA 95032-7637
Facsimile: 408-354-8839
E-mail: kwilson@smwb.com

Michael A. Oswald, Esq.
Oswald & Yap
16148 Sand Canyon Avenue
Irvine, CA 92618
Facsimile: 949-788-8980
E-mail: mao@oswald-yap.com

X BY MAIL

I caused each such envelope to be deposited in the mail at Los Angeles, California. Each such envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

EXECUTED on March 26, 2007 at Los Angeles, California.

X BY E-MAIL

I caused such document to be served via e-mail at the above-identified e-mail addresses.

EXECUTED on March 26, 2007 at Los Angeles, California.

X (Federal)

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Gloria C. Perez
Type or Print Name

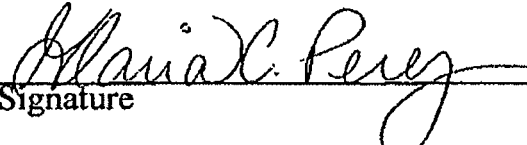

Signature

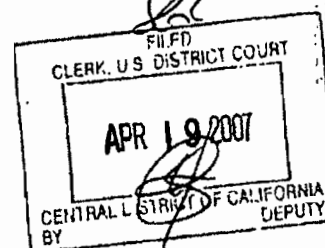
EXHIBIT D

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 ACTIVISION PUBLISHING, INC., a
12 Delaware corporation,

13 Plaintiff,

14 v.

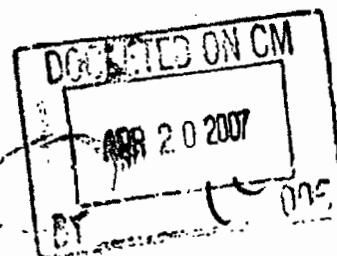
15 JOHN TAM, an individual, JAMIE
16 YANG, an individual, COREY FONG,
17 an individual, DOUG KENNEDY, an
18 individual, HONG LIP YOW, an
19 individual, RAYMOND YOW, an
20 individual, REVERB
COMMUNICATIONS, INC., a
California corporation, and THE ANT
COMMANDOS, INC., a California
corporation,

21 Defendants.

Case No. CV 07-00464 ~~CAS~~

PA(Ex)

~~PROPOSED~~ CONSENT
JUDGMENT AND PERMANENT
INJUNCTION AS TO
DEFENDANT JAMIE YANG



77

1 WHEREAS plaintiff Activision Publishing, Inc. ("Activision") and defendant
2 Jamie Yang ("Yang") have agreed in a separate confidential agreement to
3 settlement of the matters in issue between them and to entry of this Consent
4 Judgment and Permanent Injunction, it is hereby ORDERED, ADJUDGED, AND
5 DECREED THAT:

6 1. Activision alleged claims against Yang for: (1) copyright infringement
7 under 17 U.S.C. § 501, *et seq.*; (2) violation of Section 43(a) of the Lanham Act
8 under 15 U.S.C. § 1125(a); (3) violation of the Computer Fraud and Abuse Act
9 pursuant to 18 U.S.C. §§ 1030(a)(4) and (a)(5)(B); (4) violation of California Penal
10 Code § 502; (5) misappropriation of trade secrets under California Civil Code §§
11 3426, *et seq.*; (6) misappropriation of confidential information; (7) breach of
12 contract; (8) breach of duty of loyalty and fiduciary duty; (9) statutory unfair
13 competition under California Business and Professions Code § 17200, *et seq.*; (10)
14 common law unfair competition; and (11) conversion.

15 2. This Court has jurisdiction over all of the parties in this action and
16 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a) and 1367(a), as
17 well as 15 U.S.C. § 1121(a) and 18 U.S.C. § 1030(g). This Court further has
18 continuing jurisdiction to enforce the terms and provisions of this Consent
19 Judgment and Permanent Injunction. Venue is also proper in this Court pursuant to
20 28 U.S.C. §§1391(b).

21 3. Plaintiff Activision is a Delaware corporation, having its principal
22 place of business at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

23 4. Defendant Tam, an individual who resides in Milpitas, California, was
24 until recently an employee of Activision.

25 5. Defendant Yang, an individual who resides in San Jose, California,
26 was until recently an employee of Activision.

27 6. Defendant Fong, an individual who resides in Foster City, California,
28 was until recently an employee of Activision.

1 7. Tam, Fong and Yang communicated with Doug Kennedy
2 (“Kennedy”), Reverb Communications, Inc. (“Reverb”), The Ant Commandos
3 (“TAC”), Hong Lip Yow (“H. Yow”) and Raymond Yow (“R. Yow”) to form a
4 company, referred to initially as Hourglass Interactive and then, ultimately,
5 Lodestone Entertainment, Inc., to compete with Activision using Activision’s
6 confidential and proprietary information that Tam, Fong and Yang had obtained
7 from Activision. (Hereinafter, Defendants’ contemplated business venture is
8 referred to as “Lodestone”). Through Lodestone, Defendants planned to sell a
9 video game (“Defendants’ Game”) in competition with Activision’s award-winning
10 rhythm based music games called Guitar Hero™ and Guitar Hero II™ (collectively
11 the “Guitar Hero™ franchise”).

12 8. Activision is the owner of the copyrights in the audiovisual material
13 associated with the Guitar Hero™ franchise, which copyrights have been
14 registered, including Copyright Registration PA-1-322-764 for Guitar Hero™. This
15 copyright is valid and enforceable throughout the United States.

16 9. Lodestone intended to target a confidential and proprietary Activision
17 corporate opportunity for the Guitar Hero™ franchise involving a certain
18 confidential third party (the “Third Party”)¹ that was known to Tam, Fong and Yang
19 by virtue of their employment with Activision.

20 10. Tam, working with Fong, directed an Activision employee and
21 Activision independent contractors to develop, at Activision’s expense, a demo of
22 Defendants’ Game (the “Tam Demo”) for use by Defendants. Defendants
23 reproduced, displayed, published, distributed, sold and/or promoted the Tam Demo
24 without Activision’s authorization or consent.

25
26 ¹ Because the identity of the Third Party is Activision confidential and trade
27 secret information, the name of this party is not disclosed in this Consent Judgment
28 and Permanent Injunction but may be found in Appendix B to the confidential
Settlement Agreement between the parties.

11. Defendants intended to and did use the Tam Demo, to solicit partners and funds for Lodestone. The Defendants' decision to target and/or partner with the Third Party was based on Activision's confidential and trade secret information.

12. Yang signed Activision's Form of Employee Proprietary Information Agreement ("Proprietary Information Agreement") obligating her to hold in strict confidence, and not use or disclose except for the benefit of Activision, Activision Proprietary Information.² Yang explicitly acknowledged and agreed that the Proprietary Information Agreement she signed constitutes a valid and binding agreement. Yang also explicitly acknowledged and agreed that Activision Proprietary Information includes, but is not limited to, the following confidential and trade secret information, which derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use:

² "Activision Proprietary Information" includes all Activision confidential and trade secret information and, as set forth in the Employee Proprietary Information Agreement signed by Tam, Yang and Fong, specifically includes:

any and all trade secrets, confidential knowledge, data or any other proprietary information pertaining to any business of the Company or any of its clients, customers or consultants, licensees or affiliates. By way of illustration but not limitation, "Proprietary Information" includes (a) inventions, ideas, improvements, discoveries, trade secrets, processes, data, programs, knowledge, know-how, designs, techniques, formulas, test data, computer code, other works of authorship and designs whether or not patentable, copyrightable, or otherwise protected by law, and whether or not conceived of or prepared by me, either alone or jointly with others (hereinafter collectively referred to as "Inventions"); (b) information regarding research, development, new products and services, marketing plans and strategies, merchandising and selling, business plans, strategies, forecasts, projections, profits, investments, operations, financings, records, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (c) identity, requirements, preferences, practices and methods of doing business of specific parties with whom the Company transacts business, and information regarding the skills and compensation of other employees of the Company and independent contractors performing services for the Company.

- 1 (a) Financial information related to the Guitar Hero™ franchise,
2 including but not limited to, profit and loss information, cost
3 information, expenses, contract terms, sales numbers and
4 forecasts, information contained in the Guitar Hero II™ Budget
5 Summary, information contained in the Guitar Hero II™ North
6 American Xbox 360™ Strategy PowerPoint, information
7 contained in the Variable Sales & Marketing spreadsheet,
8 (b) Marketing information related to the Guitar Hero™ franchise,
9 including but not limited to marketing partners, contract terms,
10 marketing categories, information contained in the Guitar
11 Hero™ franchise plans, and identified growth areas for the
12 Guitar Hero™ franchise,
13 (c) Product information related to the Guitar Hero™ franchise,
14 including but not limited to product design, such as the design
15 for the Guitar Hero II™ Xbox 360™ controller design, future
16 product ideas and designs,
17 (d) Profit and loss statements developed by Tam, Fong and/or Yang
18 which were derived from Guitar Hero™ financial information,
19 including such statements developed for Hourglass Interactive
20 and/or Lodestone Entertainment,
21 (e) Information related to music licensing and in game advertising
22 for the Guitar Hero™ franchise, including but not limited to
23 contract terms, identities of possible future songs and artists to
24 include, and identities of partners for licensing or in game
25 advertising, and
26 (f) Vendor information related to the Guitar Hero™ franchise,
27 including but not limited to vendor identities and contact lists,
28 vendor pricing, and vendor contract terms.

1 13. Yang entered into a binding and valid employment agreement with
2 Activision. This contract required that, among other things, the term of Yang's
3 employment would continue until May 31, 2007, and that during that time she
4 would not work for any Activision competitor. TAC is an Activision competitor.

5 14. THEREFORE, it is hereby further ORDERED, ADJUDGED AND
6 DECREED THAT:

7 A. Jamie Yang, her, officers, directors, agents, servants, employees, attorneys,
8 and those in active concert or participation with her who receive actual
9 notice of this injunction by personal service or otherwise ARE
10 RESTRAINED AND ENJOINED from:

- 11 1. Copying, distributing, displaying or using any content derived or
12 copied from the Guitar Hero™ or Guitar Hero II™ video game;
- 13 2. Copying, distributing, displaying or using the game demo created by
14 John Tam based on Guitar Hero™ and StepMania, screenshots of
15 which are attached hereto as **Exhibit 1** (the "Tam Demo") and/or
16 copying, distributing, displaying or using any content derived or copied
17 therefrom;
- 18 3. Manufacturing, selling, offering for sale, advertising or distributing the
19 Tam Demo, or any rhythm based video game including or derived from
20 any Activision Proprietary Information;
- 21 4. Taking any steps to develop, market, manufacture, sell or distribute
22 any guitar, synthesizer or drum based video games, including any
23 peripherals for those games, until December 31, 2007;
- 24 5. Using, disclosing, transferring, distributing or reproducing any
25 Activision Proprietary Information and any materials or information
26 derived therefrom, including but not limited to, using it in connection
27 with developing a music or rhythm based game, or in starting a
28

1 company, said Activision Proprietary Information including but not
2 limited to:

- 3 • Financial information related to the Guitar Hero™ franchise,
4 including but not limited to, profit and loss information, cost
5 information, expenses, contract terms, sales numbers and
6 forecasts, information contained in the Guitar Hero II™ Budget
7 Summary, information contained in the Guitar Hero II™ North
8 American Xbox 360™ Strategy PowerPoint, information
9 contained in the Variable Sales & Marketing spreadsheet,
- 10 • Marketing information related to the Guitar Hero™ franchise,
11 including but not limited to marketing partners, contract terms,
12 marketing categories, information contained in the Guitar
13 Hero™ franchise plans, and identified growth areas for the
14 Guitar Hero™ franchise,
- 15 • Product information related to the Guitar Hero™ franchise,
16 including but not limited to product design, such as the design
17 for the Guitar Hero II™ Xbox 360™ controller design, future
18 product ideas and designs,
- 19 • Profit and loss statements developed by John Tam, Corey Fong
20 and/or Jamie Yang which were derived from Guitar Hero™
21 financial information, including such statements developed for
22 Hourglass Interactive and/or Lodestone Entertainment,
- 23 • Information related to music licensing and in game advertising
24 for the Guitar Hero™ franchise, including but not limited to
25 contract terms, identities of possible future songs and artists to
26 include, and identities of partners for licensing or in game
27 advertising, and
28

- 1 • Vendor information related to the Guitar Hero™ franchise,
2 including but not limited to vendor identities and contact lists,
3 vendor pricing, and vendor contract terms;
- 4 6. Taking any steps to develop, market, manufacture, sell or distribute
5 any guitar controller intended to be compatible with Activision's
6 Guitar Hero II™ game for the Microsoft Xbox 360™ game console
7 until six months after Activision commercially releases the Activision
8 Guitar Hero II™ game for the Microsoft Xbox 360™ game console or
9 until December 31, 2007;
- 10 7. Taking any steps to develop, market, manufacture, sell or distribute
11 any of the confidential peripheral devices disclosed in Appendix A
12 until six months after Activision commercially releases such a device
13 or until December 31, 2007;
- 14 8. Disclosing, transferring, distributing, reproducing or using any of the
15 business plans developed by Jamie Yang, Corey Fong or John Tam or
16 otherwise derived from those individuals for The Ant Commandos or
17 for the business venture referred to variously as Hourglass Interactive
18 and Lodestone Entertainment;
- 19 9. Soliciting Activision employees for a period of one (1) year;
- 20 10. Soliciting any of the Activision partners and growth areas identified in
21 Appendix B to the confidential Settlement Agreement for a period of
22 one (1) year; and
- 23 11. Soliciting any of the manufacturing vendors identified in Appendix C
24 to the confidential Settlement Agreement for a period of one (1) year.
- 25 B. Yang shall, within five (5) days of entry of this Consent Judgment and
26 Permanent Injunction, deliver the documents and things listed below in her
27 possession, custody or control and shall file a written certification with the
28

1 Court stating that she has done so and has not retained any such documents
2 and things or any copies, electronic or otherwise, of such things:

- 3 1. All Activision property, including but not limited to documents, files,
4 materials and things containing or derived from Activision Proprietary
5 Information and/or that Yang acquired, received, developed or worked
6 on during the period of time that she worked for Activision having
7 anything to do with the video game business; and
- 8 2. All documents, files, materials and things related to the business
9 venture Hourglass Interactive and/or Lodestone Entertainment and/or
10 otherwise related to any communications with or involving Reverb,
11 The Ant Commandos, Doug Kennedy, Hong Lip Yow, Raymond Yow
12 and/or any third party with whom Yang communicated related to the
13 business venture Hourglass Interactive and/or Lodestone
14 Entertainment.

15 C. Yang shall, within five (5) days of the entry of this Consent Judgment and
16 Permanent Injunction, disclose in writing to Activision all disclosures of
17 information, documents or materials related to or referring to Activision's
18 business or products or to the Tam Demo to third parties, including a
19 description of what was disclosed and the identity of any third parties
20 receiving such information and shall file a written certification with the Court
21 stating that she has done so.

- 1 D. Service by mail upon the counsel of record of a copy of this Consent
2 Judgment and Permanent Injunction entered by the Court is deemed
3 sufficient notice to Defendants under Rule 65(d) of the Federal Rules of Civil
4 Procedure. It shall not be necessary for any Defendant to sign any form of
5 acknowledgement of service.
- 6 E. Except as otherwise provided for in the Settlement Agreement, the parties
7 shall bear their own attorneys' fees and costs.

8
9 **IT IS SO ORDERED.**

10 Dated: April __, 2007

11 By: _____

12 Hon. Percy Anderson
13 United States District Court Judge

14 APPROVED AS TO FORM AND CONTENT:

15
16 Dated: April __, 2007

17 JONES DAY

18 By: _____

19 Robert W. Dickerson

20 Attorneys for Plaintiff
21 ACTIVISION PUBLISHING, INC.

22 Dated: April __, 2007

23 WANG HARTMANN & GIBBS PC

24 By: _____

25 Richard Cauley

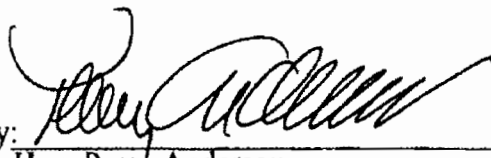
26 Attorneys for Defendant
27 JAMIE YANG
28

1 D. Service by mail upon the counsel of record of a copy of this Consent
2 Judgment and Permanent Injunction entered by the Court is deemed
3 sufficient notice to Defendants under Rule 65(d) of the Federal Rules of Civil
4 Procedure. It shall not be necessary for any Defendant to sign any form of
5 acknowledgement of service.

6 E. Except as otherwise provided for in the Settlement Agreement, the parties
7 shall bear their own attorneys' fees and costs.

8
9 **IT IS SO ORDERED.**

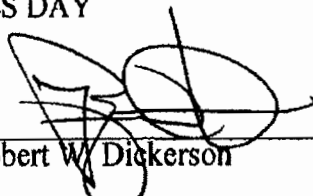
10 Dated: April 18, 2007

By: 
Hon. Percy Anderson
United States District Court Judge

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14 **APPROVED AS TO FORM AND CONTENT:**

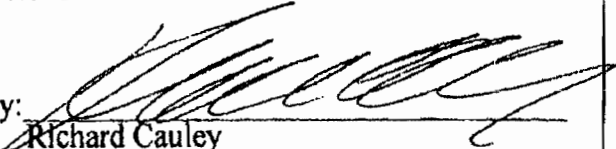
15
16 Dated: April 16, 2007

JONES DAY

17
18 By: 
Robert W. Dickerson
Attorneys for Plaintiff
ACTIVISION PUBLISHING, INC.

19
20
21 Dated: April __, 2007

WANG HARTMANN & GIBBS PC

22
23 By: 
Richard Cauley
Attorneys for Defendant
JAMIE YANG

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 S Flower Street, 50th Floor, Los Angeles, California 90071.

On April 17, 2007, I caused to be served the foregoing document described as [PROPOSED] CONSENT JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANT JAMIE YANG on all other parties to this action addressed as follows:

Richard F. Cauley, Esq.
Wang, Hartmann & Gibbs, PC
1301 Dove Street, Suite 1050
Newport Beach, CA 92660
Facsimile: 949-833-2281
E-mail: rcauley@whglawfirm.com

Kurt E. Wilson, Esq.
Sweeney, Mason, Wilson & Bosomworth
983 University Avenue, Suite 104C
Los Gatos, CA 95032-7637
Facsimile: 408-354-8839
E-mail: kwilson@smwb.com

Michael A. Oswald, Esq.
Oswald & Yap
16148 Sand Canyon Avenue
Irvine, CA 92618
Facsimile: 949-788-8980
E-mail: mao@oswald-yap.com

X BY MAIL

I caused each such envelope to be deposited in the mail at Los Angeles, California. Each such envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

EXECUTED on April 17, 2007 at Los Angeles, California.

BY FEDERAL EXPRESS

I caused each such envelope, with delivery fees provided for, to be served via Federal Express. I am "readily familiar" with the firm's practice of arranging envelopes to be delivered on an overnight basis by Federal Express. Federal Express will send its authorized courier to pick up envelopes which bear Jones Day's Federal Express Account Number at the firm's office in Los Angeles, California, and that thereafter Federal Express will deliver such sealed envelopes on an overnight basis in the ordinary course of business.

EXECUTED on April 17, 2007 at Los Angeles, California.

BY FACSIMILE

I caused such document to be served via facsimile at the above-identified facsimile number, our telecopier confirming that the transmissions were received intact.

EXECUTED on April 17, 2007 at Los Angeles, California.

1 X **BY E-MAIL**

I caused such document to be served via e-mail at the above-identified e-mail addresses.

2 EXECUTED on April 17, 2007 at Los Angeles, California.

3 **BY PERSONAL SERVICE**

4 I caused each such envelope to be delivered by hand to the offices of the addressee(s)

5 EXECUTED on April 17, 2007 at Los Angeles, California.

6 X (Federal)

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

7
8 Frances Corrales
9 Frances Corrales

Frances Corrales
Signature

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1 **Yee-Horn Shuai, Esq.**
2 **SHUAI & ASSOCIATES**
3 301 E. Colorado Blvd., Suite 514
4 Pasadena, California 91101
5 Tel. (626) 405-0348
6 Fax (626) 405-0890
7 Bar No. 104897
8 E-mail: yhshuai@gmail.com
9
10 Attorney for John Tam, Jamie Yang,
11 and Corey Fong

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 ACTIVISION PUBLISHING, INC., a
16 Delaware corporation,

17 Plaintiff,

18 vs.

19 JOHN TAM, an individual, JAMIE YANG, an
20 individual, COREY FONG, an individual,
21 DOUG KENNEDY, an individual, HONG YIP
22 LOW, an individual, RAYMOND YOW, an
23 individual, REVERB COMMUNICATIONS,
24 INC., a California corporation, and THE ANT
25 COMMANDOS, INC., a California
26 corporation,

27 Defendants.

) Case No. C 07-03536 MEJ

)
) DECLARATION OF YEE-HORN SHUAI IN
) SUPPORT OF MOTION FOR ORDER
) DETERMINING GOOD FAITH
) SETTLEMENT BETWEEN PLAINTIFF
) AND DEFENDANTS, JOHN TAM, COREY
) FONG AND JAMIE YANG AND BARRING
) OF FUTURE CLAIMS AGAINST
) SETTLING PARTIES

) Date: August 30, 2007

) Time: 10:00 AM

) Place: Courtroom B, 15th Floor

28 CONFIDENTIAL

29 CONTAINS MATERIALS DESIGNATED BY ACTIVISION AS CONFIDENTIAL SUBJECT
30 TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED
31 NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC,
32 EXCEPT BY ORDER OF THE COURT.

33 ///

34 ///

35 ///

1 I, Yee-Horn Shuai, declare and say:

2 1. I am an attorney licensed to practice law in the State of California, and the
3 attorney of record for defendants John Tam, Corey Fong and Jamie Yang.

4 2. This declaration is made upon my own knowledge and if sworn as a witness, I can
5 competently testify to the truth of the facts set forth herein.

6 3. On or about February 6 and 7, 2007, the depositions of John Tam and Corey Fong
7 took place pursuant to the court's order permitting limited expedited discovery. After the
8 deposition of Mr. Fong, the attorneys and the parties for Activision and The Tam Defendants sat
9 down face-to-face to work out reasonable settlement terms. At the end of those discussions, the
10 parties agreed in principal as to settlement of the matter against defendants John Tam and Corey
11 Fong. Approximately, 3 weeks later the parties agreed to settle the matter as to Jamie Yang as
12 well.

13 4. On or about March 27, 2007, Activision and defendants John Tam and Corey
14 Fong executed the Confidential Settlement Agreement in this matter, and entered into a Consent
15 Judgment and Permanent Injunction. On or about April 11, 2007, Activision and Jamie Yang
16 executed the Confidential Settlement Agreement in this matter, and entered into a Consent
17 Judgment and Permanent Injunction.

18 5. On or about June 8, 2007, I notified counsel for the ACT Defendants and the
19 Reverb Defendants The Tam Defendants' intent to seek good faith settlement determination and
20 invited them to join in a stipulation for a mutual waiver of any possible indemnity and
21 contribution claims against each other. Counsel for ACT Defendants flatly rejected the idea.
22 However, counsel for the Reverb Defendants told me at least twice that his clients did not intend
23 to oppose such a motion.

24 //

25 //

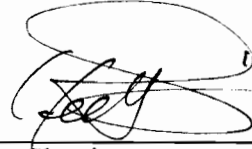
26 //

27 //

28 //

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on July 16, 2007, at Pasadena, California.

A handwritten signature in black ink, appearing to read 'Yee-Horn Shuai', is written over a horizontal line.

Yee-Horn Shuai

1 **Yee-Horn Shuai, Esq.**
2 **SHUAI & ASSOCIATES**
3 301 E. Colorado Blvd., Suite 514
4 Pasadena, California 91101
5 Tel. (626) 405-0348
6 Fax (626) 405-0890
7 Bar No. 104897
8 E-mail: yhshuai@gmail.com
9
10 Attorney for John Tam, Jamie Yang,
11 and Corey Fong

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 ACTIVISION PUBLISHING, INC., a
17 Delaware corporation,

18 Plaintiff,

19 vs.

20 JOHN TAM, an individual, JAMIE YANG, an
21 individual, COREY FONG, an individual,
22 DOUG KENNEDY, an individual, HONG YIP
23 LOW, an individual, RAYMOND YOW, an
24 individual, REVERB COMMUNICATIONS,
25 INC., a California corporation, and THE ANT
26 COMMANDOS, INC., a California
27 corporation,

28 Defendants.

) Case No. C 07-03536 MEJ
)
)

) [PROPOSED] ORDER GRANTING
) MOTION FOR ORDER DETERMINING
) GOOD FAITH SETTLEMENT BETWEEN
) PLAINTIFF AND DEFENDANTS JOHN
) TAM, COREY FONG AND JAMIE YANG
) AND BARRING OF FUTURE CLAIMS
) AGAINST SETTLING PARTIES
)

) Date: August 30, 2007

) Time: 10:00 AM

) Place: Courtroom B, 15th Floor
)
)

29 The defendants John Tam, Corey Fong and Jamie Yang's (collectively "Settling
30 Defendants") Motion for Order for Determination of Good Faith Settlement between Plaintiff
31 and John Tam, Corey Fong and Jamie Yang has come before the Court.

32 The Court, having read and considered the moving, responding and reply papers and
33 having heard and considered the argument of counsel orders as follows:

34 IT IS HEREBY ORDERED that Settling Defendants' Motion for Order for
35 Determination of Good Faith Settlement between Plaintiff and John Tam, Corey Fong and Jamie
36 Yang is GRANTED.
37
38

1 IT IS HEREBY FURTHER ORDERED that all co-defendants shall be barred from
2 asserting any claims against the Settling Defendants for equitable comparative contribution, or
3 partial or comparative indemnity, based on comparative negligence or comparative fault.

4
5 IT IS SO ORDERED;

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7 Dated: _____, 2007

8 Honorable Maria Elena James
9 Judge of United States District Court
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10 Attorney for John Tam, Jamie Yang,
11 and Corey Fong

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 ACTIVISION PUBLISHING, INC., a
17 Delaware corporation,

18 Plaintiff,

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21 individual, COREY FONG, an individual,
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23 LOW, an individual, RAYMOND YOW, an
24 individual, REVERB COMMUNICATIONS,
25 INC., a California corporation, and THE ANT
26 COMMANDOS, INC., a California
27 corporation,

28 Defendants.

) Case No. C 07-03536 MEJ
)
)

) PROOF OF SERVICE RE MOTION FOR
) ORDER DETERMINING GOOD FAITH
) SETTLEMENT BETWEEN PLAINTIFF
) AND DEFENDANTS JOHN TAM, COREY
) FONG AND JAMIE YANG AND BARRING
) OF FUTURE CLAIMS AGAINST
) SETTLING PARTIES
)

) Date: August 30, 2007
) Time: 10:00 AM
) Place: Courtroom B, 15th Floor
)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) S.S.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action, my business address is 301 E. Colorado Blvd., Suite 514, Pasadena, CA 91101.

On July 16, 2007, I served the foregoing documents described as

NOTICE OF MOTION AND MOTION FOR ORDER DETERMINING GOOD FAITH SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS JOHN TAM, COREY FONG AND JAMIE YANG AND BARRING OF FUTURE CLAIMS AGAINST SETTLING PARTIES; MEMORANDUM OF POINTS AND AUTHORITIES;

DECLARATION OF YEE-HORN SHUAI IN SUPPORT OF MOTION FOR ORDER DETERMINING GOOD FAITH SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS JOHN TAM, COREY FONG AND JAMIE YANG AND BARRING OF FUTURE CLAIMS AGAINST SETTLING PARTIES;

DECLARATION OF RICHARD CAULEY IN SUPPORT OF MOTION FOR ORDER DETERMINING GOOD FAITH SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS JOHN TAM, COREY FONG AND JAMIE YANG AND BARRING OF FUTURE CLAIMS AGAINST SETTLING PARTIES;

[PROPOSED] ORDER GRANTING MOTION FOR ORDER DETERMINING GOOD FAITH SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS JOHN TAM, COREY FONG AND JAMIE YANG AND BARRING OF FUTURE CLAIMS AGAINST SETTLING PARTIES;

PROOF OF SERVICE

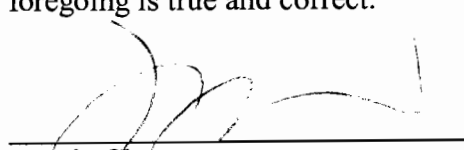
on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes by U.S. First Class Mail with postage thereon fully prepaid, deposited such envelope in the mail at Pasadena, California, addressed as follows:

See attached mailing list

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on July 16, 2007, at Pasadena, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Fannie Chung

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